



# Destitution and paths to justice

## Final report

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## Executive summary

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### Introduction

This report is one of a number of follow-ups to Fitzpatrick et al's (2016) ground-breaking research on destitution in the UK. Published alongside an update to the original findings on the nature, extent and experience of living a destitute existence in one of the world's richest economies, its primary task is to explore legal dimensions to destitution. This includes developing a legally-grounded definition of destitution, examining the role of legal or justiciable problems in the research participants' pathways to destitution and the role (or potential role) of legal interventions in finding a path out of destitution as well as the barriers to a legal solution.

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The first of these tasks involves an analysis of primary legal sources – legislation, case law and human rights treaties ratified by the UK. The remainder draw to a large extent on the set of qualitative interviews carried out for Fitzpatrick et al's (2018) second major study of destitution, with reference also made to legal and academic work on how socio-economically disadvantaged people experience and deal with justiciable problems. The interview data produced valuable insights into the relationship between (a lack of) legal advice and representation, and pathways into and out of destitution, including the barriers to advice seeking and the limitations of legal intervention as a solution. Most interviewees had engaged in some form of advice seeking, although it should be noted that the nature of recruitment through crisis services – including advice providers – automatically excluded from the study destitute individuals who had never sought any form of support or intervention. However, the analysis also revealed rich data on the wider links between destitution and legal problems; the role of each in contributing to the other; the inextricable connection between destitute households' legal and non-legal problems and the possibility of shared solutions to legal problems and destitution.

### How is destitution defined in law?

The legal sources that most explicitly define destitution centre on the establishment of a system of support for asylum seekers in the Immigration and Asylum Act 1999. The primary Act provides no more than the bare-bones definition that destitution means lacking the means of accessing adequate accommodation or other essential needs. However, a subsequent judicial review brought by Refugee Action provides an exhaustive list of things the Secretary of State and High Court collectively consider to represent essential needs. Meanwhile, secondary legislation provides for payment of a weekly allowance (currently £37.75) that is supposed to enable recipients to access those essential needs that are not provided with their housing, although the outcome of the judicial review suggests that the amount paid is not, in fact, adequate for this purpose.

Human rights law and housing legislation provide some guidance on standards of fitness, space requirements and security of tenure that under normal circumstances characterise adequate housing. What constitutes adequate accommodation for the purposes of avoiding destitution is not explicitly defined, but it is clear that these normal standards need not be met, particularly in relation to security of tenure. For recipients of asylum support, provision of accommodation includes utility bills, local taxes, basic furniture, white goods, kitchen utensils, cutlery and crockery plus cots, high chairs or sterilising equipment as required. The other items recognised as essentials by the Secretary of State and the court are:

- sufficient food
- essential toiletries
- access to primary healthcare and urgent secondary treatment
- means to travel to appointments
- means of communication with emergency services
- access to education for children and a contribution to wider socialisation costs
- suitable clothing
- household cleaning products
- nappies and formula milk
- non-prescription medication
- a minimum level of social participation.

The list of essential needs and the weekly allowance derived from the asylum support system are not necessarily recognised as a statutory destitution threshold in non-asylum contexts. Social security legislation provides a less-detailed, sparser list of essential needs, consisting of accommodation, heating, food, hygiene and clothing; lack of access to which is one of the preconditions to a hardship payment for a sanctioned claimant.

### The legal definition and the JRF definition

It is not unusual for legal definitions of poverty to differ from social science definitions, and there are differences between the legal definition of destitution presented here and the expert-consensual definition from Fitzpatrick et al's study. The former is based on the things recognised by the judiciary as essential needs. While an allowance is specified by Regulations to assist asylum seekers to access these essentials, a person will only be considered destitute if unable to resource these essential needs by any lawful means. If the individual is able to secure access through charitable or family donations, for example, they would not – under the legal definition – be considered destitute. Fitzpatrick et al's definition is based on items proposed by a panel of experts and endorsed by a majority of survey participants as essential items, accompanied by an income threshold necessary to afford them. By this definition, a person is destitute if unable to access two or more essential needs or if unable to afford all essentials from his or her own resources. The public consensus is that if an individual can only access essential needs through charitable or family support then he or she is destitute.

The broad domains of destitution (shelter, food, heating, lighting, clothing, footwear and basic toiletries) are common across the legal and the Joseph Rowntree Foundation (JRF) definitions, but there are some differences between the list of essential items within different domains. The income threshold for the JRF definition is set at £70 for a single adult, £100 for a couple and £20 per child. This is higher per adult but lower per child than the level of asylum support, so that smaller households in receipt of asylum support will have an income below the JRF threshold, but those with three or more children will have an income significantly higher than the JRF threshold.

### The state's duty to prevent/relieve destitution

Although the state has various *powers* to alleviate or prevent destitution, it is not always subject to a *duty* to support a destitute individual, or one at risk of destitution. The courts have acknowledged the possible existence of a common law obligation on the state to prevent destitution, but this cannot prevent Parliament passing legislation that imposes destitution on certain people. Some classes of people must be protected from destitution – notably asylum seekers under EU law. For others a duty to provide support only arises when living conditions risk violating rights protected by the European Convention on Human Rights (ECHR). The ECHR requires states to protect people from inhuman and degrading treatment (Article 3) and to respect their right to family life (Article 8). Neither article guarantees protection against destitution or confers an absolute right to any income. Both are likely to encompass some guarantee of shelter, but this need not meet the standards of adequacy that apply in the asylum support system. The ECHR also shares the weakness of the common law; that its protections can be overridden by primary legislation if Parliament wishes.

### A legal perspective on routes into destitution

The pathway to destitution does not consist of a single, readily identifiable 'cause', but is characterised by a cluster of problems that contribute to and/or flow from destitution. The issues experienced can be broken down into underlying sources of vulnerability to destitution and triggers of destitution.

The underlying sources of vulnerability experienced by the destitute research participants most often related to family matters; health or disability and loss of employment; low-paid and insecure employment or labour market exclusion. Whichever source of vulnerability was experienced, the result tended to be reduced income and/or increased living costs, placing the individual at risk of destitution if one of the subsequent triggers occurred.

The triggers of destitution tended to be justiciable problems – legal problems that could have a legal resolution. Most participants experienced problems with social security benefits and unsustainable debt was also widespread. In many cases the ultimate manifestation of destitution was in housing problems, with inadequacy of income and indebtedness resulting in rent arrears, insecurity of tenure or inability to move on from unsuitable accommodation.

## Social security

Apart from a small number of non-UK interviewees, all research participants were claiming income replacement and/or disability benefits at the time of or until shortly before their interview. Their experiences were frequently at odds with the ideal of social security as a rights-based guarantor of a minimum standard of living. Various interviewees had been unable to access benefits to which they seemed likely to have an entitlement, were found ineligible for benefits *they* thought they should be able to claim or experienced fluctuations of income linked to changes in their health, sanctions or deductions for overpayments or debts. Knowledge of possible entitlements, the application process and the basis on which decisions could be challenged was often limited. There was a strong perception that the system was arbitrary and unaccountable. The prospect of transitioning to Universal Credit (UC) was a source of dread for some, chiefly because of the prospect of a delay between application and first payment, and because of concerns about the online application and claim management process. Positive experiences were also evident: there were examples of smooth application processes, successful appeals and extremely helpful Jobcentre Plus staff. Universal Credit, too, was more eagerly anticipated by those interviewees who had cycled in and out of low-paid work, who hoped it would mean fewer interruptions of income compared to Jobseeker's Allowance.

## Debt

Interviewees struggled to meet their essential needs on a very low income and many accumulated debts, through borrowing or an inability to pay rent or household bills in full. These day-to-day costs were much more often the cause of indebtedness than what might be termed 'irresponsible' borrowing. Social security issues could also result in debt as claimants were forced to seek advance payments, budgeting loans and crisis loans, or had to pay back overpayments. Some interviewees felt they had fallen victim to predatory lenders, or to housing providers who levied additional charges for furniture or certain services. Interviewees' assessment of whether their debt was a problem depended less on how much they owed, than on their ability to meet monthly repayments and how tenaciously they were pursued by creditors. Public bodies tended to be viewed as the least-forgiving lenders: more likely than others to initiate legal proceedings and less likely to agree to debt relief. Private creditors varied dramatically in their treatment of debtors, but water and energy suppliers were often praised for their flexible and supportive approach to dealing with arrears. Unfortunately, customers with pay-as-you-go meters could find it harder to reach a favourable arrangement, as a portion of any credit added to the meter would automatically be deducted for repayment of arrears. Ironically, recent attempts to pay off arrears could also disqualify customers from debt-reduction schemes.

Debt was not always recognised as a legal issue, resulting in many interviewees attempting to negotiate with creditors with limited support and varying degrees of success. Overall, this was an area in which advice seeking was relatively common, although normally this only occurred at a crisis point. The most favourable outcome, achieved by a number of interviewees, was the conclusion of a debt relief order (DRO), although this was not necessarily a universally-available option because of the associated charge. Further, the extent to which a DRO improved the situation could be dependent on creditors' willingness to be covered by it; certain key creditors, notably local government, were often unwilling.

## Housing

Housing is recognised as an essential need – arguably *the* essential need – in both the JRF definition and the legal definition of destitution. Housing problems, including rent arrears, unfitness, risk of eviction and homelessness, were equally central to research participants' experiences of destitution. Inability to afford adequate accommodation tended to flow from insufficient social security benefits and the prevalence of rent arrears meant

there was also a close connection between housing issues and debt. Street and hidden homelessness had been experienced by some interviewees. Falling back on friends and relatives was thought to be becoming less feasible due to social security reforms that discourage housing benefit claimants from renting accommodation with a spare bedroom.

The same set of social security reforms lay at the heart of some interviewees' affordability problems, with both social and private tenants penalised for under-occupancy. Securing smaller accommodation could be difficult due to lack of availability, and might mean moving to a different local government district and losing contact with support or advice workers. Discretionary Housing Payments were not always available and sometimes covered only a small fraction of the shortfall in rent. Affordability was not the only serious housing concern: some interviewees described ill-treatment by landlords as well as living in properties they considered patently unfit for human habitation, a perspective confirmed in two cases by environmental health intervention.

## **Social security and destitution**

The prevalence of social security problems as a trigger for destitution means there is merit in more closely examining some of the key benefit-related issues that played a role in pushing research participants towards destitution. Benefit delays and sanctions were, respectively, experienced by 29% and 19% of Fitzpatrick et al's (2018) survey respondents and by a number of interviewees. These income shocks could come on top of existing vulnerabilities resulting from subsistence on out-of-work benefits whose level barely exceeds the JRF destitution threshold for an adult and has fallen in real terms since 2012, compounded by cuts to housing and (more recently) child-related benefits. While it is not suggested that destitution is intentionally designed into the social security system, the interviewees' experiences provide ample evidence that protection from destitution is not a given.

Between 16% (income-based Employment and Support Allowance) and 44% (income-based Jobseeker's Allowance) of all people who are potentially eligible for a means-tested benefit in the UK fail to claim the benefit. While reasons can be complex and varied, there was strong evidence that research participants did not claim income replacement or disability benefits because they did not realise they might be eligible. System prompts to encourage individuals to apply for particular benefits relevant to their circumstances either did not exist or were not reliable.

There is a clear role for expert advice in helping people understand their potential social security entitlements and to navigate the application process. The length of time taken to complete a form could be problematic for claimants with no home internet connection, who had to contend with time-limited computer access at the library or across an unreliable mobile connection. Frequent reassessments and re-applications, along with fluctuations in circumstances necessitating moves between different benefits could lead to claimant anxiety and delayed payments. These problems came on top of existing financial precarity and the work of coping with an often-chaotic life, so that interviewees could lack the cognitive bandwidth to deal with their social security problems. External advice could be of great help in overcoming the various barriers to making a successful claim, but was often sought only as a last resort. Where claims were unsuccessful, it was not always clear why decisions to appeal (or not) were taken. Research on social security tribunals indicates that there is merit in appealing, with success rates around 70% for some benefits, and that appeals are more likely to succeed if the applicant attends an oral hearing with expert support.

Given the potential for sanctions and delays to trigger destitution, there is a particular need for advice and support here. Interviewees lacked awareness of why benefit payments had been interrupted and what could be done to avoid or resolve this. While there were examples of supportive practice by Jobcentre staff seeking to help claimants who struggled to meet their jobseeking obligations, there was evidence of inconsistencies within the system, compounding claimants' lack of awareness of their rights and obligations.

## **Legal support for problems of destitution**

An individual's vulnerability to a cycle of legal problems mirrors the vulnerability to the cluster of destitution problems that our interviewees faced: debt, ill health, labour market exclusion, and housing. There are identifiable intervention points that could conceivably assist with many of the difficulties in resolving the problems faced by our interviewees. These intervention points sit alongside recognisable patterns of advice-seeking behaviour in the general population predicated on lack of awareness of legal rights or assistance to enforce them. For



interviewees, these barriers were exacerbated by the immediate need to focus on the consequence rather than cause of the problem. The need to prioritise survival strategies meant interviewees were unable to adopt strategic approaches to problem resolution.

Interviewees often relied on self-help, but this was limited in its effectiveness and could be expensive and time consuming. Where interviewees sought external help, they faced barriers in identifying and accessing advice providers who could assist with their problems. Interviewees reported difficulties in getting access to advice organisations, which had limited capacity both in terms of being able to provide appointments or support and in relation to the range of legal problems that interviewees experienced. Access was also limited by geographical and economic isolation as well as digital exclusion, which multiplied further when the necessary advice sources are not equipped to assist in overcoming an individual's emotional fatigue and lack of legal capability. The advice landscape in England and Wales has faced particular challenges, due to the significant reductions in funding under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which was intended to deliver greater efficiency in the justice system. There has been a move away from funding face-to-face advice and an expansion of telephone advice, reducing the physical presence of advice organisations; however, this shift in provision has not been matched with the development of a public awareness campaign and therefore the concerns about poor legal knowledge, evidenced in this research, are intensified by the emergence of 'advice deserts' and limitations on the services that interviewees accessed. This has meant that early intervention for justiciable issues is less likely, which in turn means that it becomes more difficult to avoid the triggers for destitution.

The absence of a visible and coherent legal services market meant that the pathway to advice for interviewees involved convoluted routes leading to and from the Jobcentre, food bank, Housing Association, council, social worker and GP, indicating the need for a multiplicity of advice provision, responsive to where the individual's advice seeking is focused. Individuals were referred to, or came across, a range of advice services, from voluntary to private sector, but there was very limited evidence of legal aid being used to finance legal resolution, and a worrying perception among interviewees that legal aid no longer existed. There were some concerns about the quality or appropriate 'fit' of advice provision, particularly in relation to online advice. Since destitute individuals' legal issues form part of, and are inseparable from, a wider cluster of problems, a legal intervention is not, in itself, likely to be a solution. Nonetheless, there is potential for legal and other forms of expert advice and support to help individuals experiencing destitution to improve their situation, particularly in the key fields of social security, debt and housing.

## Case studies on destitution and paths to justice

The two case studies drawn from our interviews demonstrate how the time, energy and cognitive bandwidth required to survive destitution and the associated cluster of problems can leave little scope for addressing the problems, or even recognising those that might have a legal solution. For each interviewee, social security problems represented the most immediate trigger of destitution. Some of these problems flowed from policy design – curbs on housing benefit entitlement. Others related to the administration of the system – the operation of the sanctions regime; the difficulty of proving where children are permanently resident and the deduction of considerable debt repayments from an already-low income. Both 'Jennifer' and 'Rebecca' had sought legal or other specialist advice on some of their problems, with some success in bringing about a resolution. However, the fragmented nature of advice provision – with providers limited to assisting with certain issues, clients in a defined geographical area or certain classes of people – limited the possibility of really engaging with the range of problems in the interviewees' clusters. For the most part, it remained the responsibility of the individual to determine that s/he had a problem that might call for expert advice and to identify an organisation that might be able to assist.

## Key recommendations

### 1. A statutory duty on destitution

Primary legislation should establish a clear definition of destitution and a duty on public authorities to protect all persons lawfully present in the UK from destitution.

The huge diversity of problems that contribute to, flow from and are entrenched by destitution demonstrates that the response to destitution needs to be a holistic one across the key domains of destitution (shelter, food, heating, lighting, clothing, footwear and basic toiletries). The first recommendation addresses the need for a

shared understanding of what destitution is and a common purpose of preventing it across government and the public sector. There is already some shape to a legal definition, primarily informed by the asylum support regime and the social security regulations, but adopting the JRF definition has the advantage of having been tested with the public and according with the views of experts. Providing a legal frame for something that has already achieved public consensus makes best use of the law as a normative tool, to embed cultural change in society and across government. This report therefore recommends that the JRF definition of destitution is given statutory force.

## 2. Resourcing legal interventions

Resources should be targeted on the potential for justiciable problems to be identified by co-locating advice provision with crisis and support services, and resourcing advisers to address the multiple causes of justiciable problems that trigger destitution.

To make a legal definition more meaningful, individuals need to be able to enforce their right to be free from destitution. This requires access to justice, which itself is frustrated by the experiences of destitution. The interviewees in our study experienced a wide range of difficulties, rather than suffering a single justiciable problem; pointing to the need to understand and respond to problem clusters. Enabling advisers to identify the multiplicity of problems destitute individuals have, and to support the resolution of these interconnected issues, would facilitate more effective interventions, dealing with both cause and consequence. Given that the problems most likely to trigger destitution are in social security, housing and debt, there should be a partial reinstatement of legal aid to cover these issues. This would resource legal and voluntary sector advisers to at least tackle these core problem clusters, and deal with the financial and housing insecurity that push individuals into destitution.

## 3. Access to social security

The government should be placed under a positive duty to ensure that individuals are receiving the social security benefits they are entitled to.

A positive duty would require governments to address the barriers within the social security system that inhibit legal entitlements being awarded; identify the extent of benefit underpayments; the reasons for this; and actions that will be implemented to improve uptake. Overall, experiences of the social security system point to a general need for citizens to better understand their social rights, alongside a specific need for expert assistance in navigating a complex and bureaucratic system to realise those rights. Applying the ‘polluter pays’ principle, a case can be made that the government department with responsibility for social security should part-fund the consequential advice provision to assist individuals to navigate the social security system. This should include a government-led nationwide campaign designed to build awareness of the new eligibility criteria, processes and conditions attached to claiming Universal Credit, as well as legal capability. The government should also consider how to guarantee a minimum income floor beneath which benefit payments will not be cut, either by sanctioning in proportion to that income floor or making automatic provision for hardship payments unless it can be established that an individual will not be affected disproportionately by the reduction in their income.

## Emerging recommendations on debt and housing

In relation to debt, the main recommendation emerging is to provide time for debtors to negotiate realistic repayment plans with debt providers, funding advice to support this and including means of managing the costs both of a debt relief order and bankruptcy.

For housing, a review of the operation of housing-related benefits should be undertaken to determine the appropriateness of aspects of policy including the social sector size criteria (‘bedroom tax’), payment of the benefit to the tenant rather than the landlord and the level of the local housing allowance. This report also endorses JRF’s recommendation (2018) that there are comprehensive housing advice services covering all tenures.

## Further research

The problem of destitution is an emerging area of research that merits further development. There are a number of critical areas that could be progressed, based on the research from this report and from the existing research by Fitzpatrick et al, looking particularly at the further fusion of the social policy research on destitution and empirical legal research on access to justice. Four distinct proposals are suggested to move this agenda forward:

1. A legal needs survey capable of exploring the extent to which legal needs might manifest as triggers for destitution.
2. Further analysis of the original data set created by Fitzpatrick et al for the 2015 interim report on destitution to inform the drafting of primary and/or secondary legislation to implement a duty to prevent destitution, drawing on the existing public consensus that has been established.
3. A qualitative study of why individuals vulnerable to destitution do not claim social security benefits to which they may be entitled, and a parallel study to understand why claimants do not dispute decisions when their claim is refused.
4. Qualitative research with decision-makers, advisers and welfare-to-work providers to determine what factors are taken into account when deciding whether to increase a claimant's conditional requirements and the triggers that lead to the referral or imposition of a sanction.

That a report on destitution needs to be written is itself a warning that current social support structures are not working. There is much that can be done to assist individuals facing destitution and this report highlights the many justiciable issues that arise from the circumstances of destitution, and the various intervention points where individuals could be assisted to escape destitution. Critically, however, current human rights protections do not go far enough: statutory protection is needed, and this report provides ample empirical evidence for this assertion. A failure to act at the point of destitution will inevitably lead to the UK breaching its domestic human rights obligations; the distance between current levels of destitution and inhuman or degrading treatment under Article 3 ECHR is little more than a continuing deterioration of destitute circumstances. The fact that destitution has been recognised by public consensus as being unacceptable underlines what should be a logical position: that the state should be obliged to provide the conditions under which people can satisfy their essential needs.

# Introduction

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## Foreword

This report was commissioned by the Legal Education Foundation and the Joseph Rowntree Foundation (JRF) to explore the links between access to legal advice and representation (or lack thereof) and pathways into and out of destitution. The report builds on two reports by Fitzpatrick et al (2016; 2018) that examine the scale, causes and experience of destitution in the UK. The report also builds on a considerable body of evidence on access to justice that identifies the factors which impact on whether someone seeks advice for a justiciable problem; the barriers that inhibit advice-seeking behaviour; and the ability of the advice sector in the UK to respond to advice demand.

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Two significant factors cut across the issues of destitution and advice: substantial reforms to social security benefits and decision-making, particularly since the Welfare Reform Act 2012; and the extensive cuts to state-aided legal support in England and Wales under the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012; alongside increased austerity that led to significant, though less extreme, reductions in funding for legal advice in Scotland and Northern Ireland. The combination of these elements has created a simultaneous demand for advice with a reduction in the capacity of the advice sector to meet that demand. The impact of this advice deficit has been examined by the Justice Committee, independent commissions and a range of advice organisations and authors who have documented the stark reductions in the number of individuals able to access state-funded legal assistance. At the same time, the Work and Pensions Committee, the Social Security Advisory Committee (SSAC) and voluntary and statutory sector organisations have identified the often-profound impact of welfare reforms on those individuals reliant on social and financial support from the state. The crossover between the two issues is inevitable – those most reliant on state assistance will be those most affected by the withdrawal of that assistance – but what this report highlights is the critical overlap between reductions in social support that trigger destitution and the inability of those individuals most badly affected to resolve the justiciable issues that arise from these same triggers.

## Background: Destitution in the UK

Fitzpatrick et al's (2016) initial study *Destitution in the UK* was prompted by what the authors viewed as the growing perception that levels of destitution were increasing. Connections had been made in the preceding years between extreme poverty and aspects of immigration and asylum, social security and housing policy as well as exploitative labour practices, along with a particular focus on the growing provision of and reliance on food aid as a manifestation of this apparent trend. However, the term 'destitution' was deployed in a general, rhetorical sense; there was a need for a precise definition of what destitution means in contemporary UK society, as Rowntree's (2000) seminal study produced a definition of 'primary poverty' for the start of the 20th century. Perhaps inevitably given the absence of a clear definition, Fitzpatrick et al also identified a lack of firm evidence of the extent of destitution (without which it is impossible to assess whether its prevalence is in fact increasing) and of any causal relationship with the various policy and social developments mentioned.

For the original study, a consensual definition of destitution was derived from a combination of expert and consensual methods, consisting of interviews with 50 experts and a survey of 2,000 members of the public. This produced a material deprivation-based definition of destitution, consisting of a list of items considered

to represent essential needs, and a cash destitution threshold, considered to represent the minimum income required for households of various compositions to acquire these items. Having established a definition, further surveys were conducted, along with qualitative interviews with 80 destitute respondents, to establish the extent and nature of destitution in the UK in 2015. The follow-up study, in 2017, again involved a census survey, this time of users of 103 different crisis services at 16 locations around the UK (2,905 responses). This was followed by a set of qualitative interviews with a purposively selected sample of 41 survey respondents, who had agreed to be re-contacted. Headline findings include that 132,550 destitute households across the UK were in contact with local authority or voluntary sector advice services in a typical week, with 785,000 households including 1,550,000 people in this position over the course of 2017. Direct comparison with the 2015 figures is not possible due to methodological changes which are considered to make the 2017 figures more accurate, but those figures that are comparable suggest that the number of destitute people in the UK has fallen. It is also impossible to estimate how many households or individuals are destitute but not in contact with any crisis services.

## Destitution and pathways to justice

At its outset, the remit of the present study was fourfold:

- Explain the legal definition of destitution and how this differs from the approach proposed by Fitzpatrick et al.
- Identify and describe potential links between pathways into and out of destitution and access to timely legal advice and representation.
- Provide an overview of key issues in access to legal advice and representation in recent years, and how these have intersected with other austerity measures that Fitzpatrick et al implicate as contributing to destitution.
- Analyse the transcripts of the interviews to identify links between access to legal advice and the experience of destitution.

The law is defined through legislation – laws that are passed in Parliament and devolved assemblies; ‘common law’ – the interpretation of law by judges in individual cases; and international legal instruments – the agreements made by different governments across the world, which the UK has agreed to comply with. Not all international legal instruments will apply directly to UK law. Only those that have been directly incorporated into UK law can be relied on by citizens in UK courts, and the Human Rights Act 1998 which incorporates the European Convention on Human Rights (ECHR) is the most obvious example of this. Other international agreements, such as the United Nations Convention on the Rights of the Child (UNCRC), have not been incorporated into UK law, and so they act as a persuasive rather than binding interpretation of the law. Laws that have statutory force – those that are enacted by Parliament – are the highest form of law, and Parliament can legislate at any time to change the legal interpretations that judges have provided in case law, or to repeal existing legislation including that which binds the UK to international agreements.

The development of a proposed legal definition of destitution drew primarily on the statutory sources highlighted by Fitzpatrick et al (2016, p. 7) as a possible basis for an ‘official’ definition, namely immigration and asylum legislation, although only through engagement with the subsequent case law is it possible to determine where the social minimum established by statute is found in practice. This definition, reinforced to some degree by social security regulations, overlaps to a significant extent with that proposed by Fitzpatrick et al in terms of the things identified as essential needs, but there are important differences between the cash destitution thresholds. It was also possible to map the definition against what human rights law suggests represents a minimum acceptable standard of living. Moving beyond the task of establishing a legal definition of destitution, legislation, case law and international human rights agreements were also used to explore the extent to which the state is subject to a duty to protect citizens and others present within its territory against destitution.

In completing the remaining tasks, the authors drew on a blend of data from the 2017 interviews, primary legal sources, research literature and policy documents. With permission from the research participants, the 41 in-depth interviews were audio recorded and fully transcribed by the research team at Heriot-Watt University, which authored the two *Destitution in the UK* reports, and shared with the team at Ulster University responsible for this report. The interviews focused on routes into and out of destitution in the UK, picking up on particular issues that emerged from the 2016 study, including the debt recovery practices of public authorities and utility

companies (the subject of a separate JRF-funded study on this by Barker et al, 2018) and access to legal and other forms of advice. These interviews were thematically coded and analysed using NVivo software, with each research team undertaking its own process of coding and analysis. As envisaged, the interviews gave valuable insights into the relationship between (a lack of) legal advice and representation and pathways into and out of destitution. However, the analysis also revealed rich data on the wider links between destitution and legal problems; the role of each in contributing to the other; the inextricable connection between destitute households' legal and non-legal problems and the possibility of shared solutions to legal problems and destitution.

This report, then, necessarily takes a somewhat broader perspective on the relationship between destitution and (in)justice than the four bullet points above would imply. Chapter 2 begins this process by examining the interviewees' pathways to destitution through a legal lens. This identifies three broad types of problem, each of which could potentially be resolved with the aid of legal advice, that act as triggers to destitution for the vast majority of participants – access to social security benefits, problem debt and issues with housing. However, these triggers typically occur *after* vulnerability has been created by a range of underlying problems, which may or may not be legal in nature. The latter primarily consist of employment, family and health problems, with criminality (whether as victim or perpetrator) featuring in a smaller number of cases. Access to social security benefits having been identified as the most important of the three triggers (often causing indebtedness or housing insecurity), Chapter 3 takes a closer look at the problems within the system that expose claimants to the risk of destitution, drawing on both research literature and the experiences of interviewees. Where these problems can be characterised as questions of administrative or bureaucratic justice, there is clear potential for expert advice to help claimants (or potential claimants) access their entitlements, although this is not to discount the desirability of systemic change in some areas. Where the problems flow from the nature of the benefits provided – restrictive eligibility criteria, low payments or exacting conditionality – then the appropriate solution is at the policy or rights-protection level. Chapter 4 turns the focus more explicitly on the advice-seeking behaviour of destitute individuals and the potential contribution of legal advice to navigating a route out of destitution. Most interviewees had engaged in some form of advice seeking, although it should be noted that the nature of recruitment through crisis services – including advice providers – automatically excluded from the study destitute individuals who had never sought any form of support or intervention. Their experiences and the literature show that advice – if the individual knows enough about his or her problem to realise advice should be sought – can form part of a solution to legal or quasi-legal problems, but is far from a guaranteed escape route from destitution. In the present age of austerity, this can result from problems of access, but even when advice services are within reach they can struggle to unpick the complex cluster of problems experienced by destitute individuals (as outlined in Chapter 2), or individuals may not be able to take or act on advice because of the need to prioritise survival. Two research participants are profiled in detail in Chapter 5, their stories neatly illustrating the limitations of current legal protection against the tangle of problems contributing to (and flowing from) destitution; the centrality of social security to this problem cluster; and the benefits and limitations of, as well as some of the barriers to, advice seeking. Finally, a concluding chapter recaps the key findings and outlines the research team's recommendations and priorities for future research on destitution and legal need.

# 1. How is destitution defined in law?

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## Summary

Fitzpatrick et al's definition of destitution is derived from consultation with experts and endorsed by members of the public, but does not currently have any legal standing – although one of our recommendations is that it *should* inform a future, statutory definition of destitution. At present, the clearest basis for a 'legal definition' of destitution is provided by the statutory system for the support of asylum seekers at risk of destitution. This states that a person is destitute if unable to access adequate accommodation or other essential needs. Essential needs are not precisely defined in the legislation but have been found by the High Court to include utilities, local taxes, basic furniture, white goods and kitchen equipment, food, clothing, toiletries, healthcare, means of essential travel and communication, education and socialisation for children, babies' essentials, non-prescription medication and a minimum of social participation. A weekly allowance – currently £37.75 – is available to asylum seekers who cannot otherwise access these essentials, but case law suggests it may not in fact be sufficient to purchase all the items on the list. Nor is this necessarily recognised as a statutory destitution threshold in contexts other than asylum support – social security regulations identify a much sparser list of essential needs, encompassing accommodation, food, hygiene, heating and clothing.

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In non-asylum contexts, the extent of the state's duty to protect against destitution is also limited. Certain senior judges have speculated that the 'law of humanity' imposes such a duty, but even if this is the case, any such protection can be overridden by Parliament. The European Convention on Human Rights (ECHR) offers some protection of a minimum standard of living by prohibiting inhuman and degrading treatment and guaranteeing respect for family life. This, though, does not mean there is a right to protection against destitution as defined in the asylum support system or by Fitzpatrick et al; the level of material support required to prevent degrading treatment or to enable family life to continue may be significantly lower. While this is not to deny the existence of various welfare systems whose functions include the relief or prevention of destitution, our recommendations identify a need for a statutory guarantee that this protection will be available to anyone who is lawfully present in the UK.

## Introduction

*Destitution in the UK* (Fitzpatrick et al, 2016) proposes a groundbreaking, expert- and consensually-derived definition of destitution (the 'JRF definition'). This encompasses a deprivation-based measure, comprising a set of goods, services and activities agreed to represent essentials for a modern lifestyle by the participants, alongside an income threshold below which it is considered impossible for a household to access these essentials. The



present chapter aims to complement this by exploring the possible bases of a legally-grounded definition of destitution. This draws on a review of legislation and case law concerning destitution or destitute individuals, as well as social security legislation and cases concerning hardship. The two definitions have much in common – each consists of a list of items identified as essential needs, many of which are common or comparable, and a weekly income threshold below which it is considered that a household would be unable to afford its essential needs after housing (and, in the case of the legal definition, some other) costs. However, they serve different purposes and are the outcome of very different processes. The JRF definition reflects what *expert participants* and *members of the public* recognise as a person's 'minimum material necessities' (Fitzpatrick et al, 2015, p. 32) and forms the basis for a wider assessment of the extent, causes and impact of destitution in the contemporary UK. The main source for the proposed legal definition is the statutory scheme for the support of asylum seekers who would otherwise be destitute. Here, a general definition of destitution in primary legislation as implying inability to access 'adequate accommodation' or other 'essential needs' forms the basis for a list of essential needs set by the Secretary of State (supplemented by the judiciary) and for a weekly allowance (set out in secondary legislation) intended to ensure those essential needs are within reach. Social security legislation puts forward a more general, and more restrictive, set of essential needs through the criteria for access to a hardship payment. Alongside the primary and secondary legislation, the authors reviewed 565 post-2000 cases alongside a very small number of key pre-2000 cases.<sup>1</sup> Consideration was also given to the UK's human rights obligations, which can help illuminate what are often rather general statements of essential needs but ultimately represent an unreliable basis for a legal definition of destitution. Most ratified treaties do not form part of UK law, and the minimum standards of economic welfare set by the European Convention on Human Rights (which is part of UK law) fall below the level of destitution in many cases. A comparison of the JRF and legal definitions reveals important differences between the lists of essential items, the income threshold and, perhaps most crucially, on the question of whether a household should be considered destitute if it cannot meet its essential needs from its own resources, but *can* access essentials by other means.

While the definition proposed in this chapter is legally *grounded*, in the sense that it is shaped by legal sources, it cannot be taken for granted that the courts accept it as a legal destitution threshold, less still as establishing an income floor – as shall be discussed, there is no absolute duty on the state to protect everyone against destitution. UK courts have at times acknowledged the possible existence of a 'law of humanity' requiring the state to protect those within its territory from starvation (*R v. Inhabitants of Eastbourne* [1803]: 107). Human rights law also contains various possible benchmarks for a guaranteed minimum standard of living. However, apart from the European Convention on Human Rights (ECHR), which is relatively weak in its protection of social rights, few human rights provisions are enforceable in the UK. Further, both the common law and the ECHR rights can be overridden by primary legislation should Parliament wish to do so. Consequently, while a range of statutory services offering protection against destitution exist – social security, local authorities' discretionary welfare and Discretionary Housing Payment schemes, the asylum support system and children's services – these safety nets are not without holes. Individuals may be excluded from support if they fail to comply with conditions such as (for example) seeking paid employment, taking other steps to meet their own needs before turning to the state or registering their asylum claim as soon as possible on arrival in the UK. A judicially-enforceable minimum standard of living, then, only exists for specific groups, may be contingent on compliance with the conditions set, and can be lower than the 'legal' destitution threshold suggested here.

## Defining destitution

Destitution became a recurring issue for the UK courts in the 1990s due to changes in the financial support available to non-nationals. As an increasing number of classes of migrants, including many asylum seekers, were excluded from Income Support, a series of cases considered the circumstances in which an individual becomes entitled to support from the state, the responsible authority and the adequacy of support. To comply with the requirements of European Union law (currently Directive 2003/9/EC), it became necessary to put in place a new system of support specifically to protect asylum seekers from destitution. The legislation establishing this system – the Immigration and Asylum Act 1999 – hence forms the starting point for a legal definition of destitution in the UK. The Act itself is relatively vague, s95 simply stating that an individual is destitute if 'he does not have adequate accommodation or any means of obtaining it... or he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs'. The Asylum Support Regulations 2000 go on to establish the level of support that should be provided to asylum seekers who would otherwise be destitute, but only through subsequent litigation would it become clear what the executive and judiciary recognise as essential needs. The following sections draw on this case law, on non-asylum legislation and case law and on the UK's



human rights obligations to more precisely define adequate accommodation and other essential living needs. It is clear that an individual claiming destitution will need to demonstrate considerable deprivation, not merely reduced living standards compared to what he, she or other members of society may be accustomed to (*M v. G* [2017]).

### Adequate accommodation

Access to adequate accommodation forms the first part of the destitution test set out in the asylum legislation and 'accommodation' is identified as an essential need in the social security regulations (Universal Credit Regulations 2013 reg 116; Jobseeker's Allowance Regulations 1996 reg 140). The Asylum Support Regulations 2000 do not provide a definitive statement of what constitutes adequate accommodation, but stipulate factors to be taken into account. These are:

- whether it would be reasonable for the person to continue to occupy the accommodation
- whether the accommodation is affordable
- whether the current accommodation is provided on an emergency basis while a claim for asylum support is determined
- whether the person can secure entry to the accommodation
- in the case of mobile accommodation, whether there is a place where the person is entitled or permitted to place it and reside in it
- whether the accommodation is available for occupation by the person's dependants
- whether continued occupation of the accommodation will lead to domestic violence
- the general circumstances prevailing in relation to housing in the district.

Adequacy of accommodation is not diminished by insecurity of tenure (a temporary arrangement or the lack of any enforceable right to occupy), sharing with others or location.

Social security (Housing Benefit Regulations 2006 part 3) and housing law (Housing Act 1985 s325-326) provide general guidance on what constitutes adequate accommodation. A house will normally be inadequate in terms of space if individuals of the opposite sex aged 10 or older, who are not a couple, have to share a bedroom or if there is less than one bedroom per two occupants overall.<sup>2</sup> A 'spare' room might be a necessity for some domestic violence victims or disabled people, while others may need to stay in a particular house because of adaptations that have been made (*R (MA) v. Secretary of State for Work and Pensions* [2016]) or because it is a domestic violence refuge (*Birmingham City Council v. SS and SA* [2016]).

Immigration case law shows that accommodation may be considered adequate even if it falls below normal standards. Whereas street homelessness will always be considered destitution, other forms of homelessness may not (*MK, AH v. Secretary of State for the Home Department* [2012]); nor may frequent enforced moves or having to sleep on the floor for short periods (*R (S and J) v. Haringey LBC* [2016]). Accommodation provided to non-asylum seekers subject to immigration control under s4 of the Immigration and Asylum Act 1999 need not even be adequate as long as conditions are not so poor that they infringe ECHR rights. By this standard, 'overcrowded but comfortable' housing will be acceptable (*MN, KN v. Hackney LBC* [2013]: 28); so, for a limited period, may a rodent-infested property (*R (C, T, M, U) v. Southwark LBC* [2014]). For applicants with specific needs and a right to be housed by the state, adequacy of accommodation can include a location close to particular facilities, such as health services or a place of worship, but not in a specified area (*R (Mahdia) v. Islington LBC* [2000]).

The European Social Charter (ESC) and International Covenant on Economic, Social and Cultural Rights (ICESCR) can inform the assessment of housing adequacy. Although neither treaty is enforceable in the UK courts, the state has ratified both and therefore agrees to be bound by their provisions. Article 16 ESC (the family's right to social and economic protection) requires the provision of adequate family housing in both qualitative and quantitative terms – there must be sufficient supply to meet demand and housing conditions must meet current expectations

(European Committee of Social Rights [ECSR], 2002). Its interpretation is influenced by Article 31 of the revised Charter (the right to housing), which has not itself been ratified by the UK. The ECSR (2003) considers that this encompasses a more detailed definition of adequate housing as:

“a dwelling which is structurally secure, safe from a sanitary and health point of view and not overcrowded, with secure tenure ... A dwelling is safe from a sanitary and health point of view if it possesses all basic amenities, such as water, heating, waste disposal; sanitation facilities; electricity; etc and if specific dangers such as, for example, the presence of lead or asbestos are under control. Over-crowding means that the size of the dwelling is not suitable in light of the number of persons and the composition of the household in residence. Security of tenure means protection from forced eviction and other threats.”

Article 11 ICESCR (the right to an adequate standard of living) encompasses a subsidiary right to housing that is not only habitable, but meets current cultural and technological requirements (Committee on Economic, Social and Cultural Rights [CESCR], 1991).

### Other essential needs

Although the Immigration and Asylum Act 1999 requires that asylum seekers are able to meet their essential living needs, legislation does not specify what constitute essential needs. The Asylum Support Regulations 2000 state that clothing preferences (although not clothing per se), faxes, photocopying, computer facilities, toys, recreational items, entertainment and travel expenses are not essentials. Social security legislation is scarcely more precise: essential needs for the purpose of a hardship payment are defined as ‘accommodation, heating, food and hygiene’ (Universal Credit Regulations 2013) or ‘food, clothing, heating and accommodation’ (Jobseeker’s Allowance Regulations 1996).

Case law (*R (Refugee Action) v. Secretary of State for the Home Department* [2014] at [50]) reveals that the Home Office calculated the support provided to asylum seekers with reference to the following list of essential needs:

- safe, furnished accommodation with all utilities
- sufficient food to keep those on support in health and to avoid illness or malnourishment
- essential toiletries
- access to primary healthcare and immediately necessary or urgent secondary treatment
- means to travel to appointments
- means of communication with emergency services
- access to education for children as well as a contribution to wider socialisation costs
- suitable clothing to avoid any danger of illness.

Utility bills, local taxes, basic furniture, white goods, kitchen utensils, cutlery and crockery plus cots, high chairs or sterilising equipment as required are also considered essentials, but are supplied with housing and need not be purchased from the benefit paid, with primary and necessary secondary healthcare also delivered free of charge.

The adequacy of this list of essentials was subject to a successful judicial review by *Refugee Action*. Household goods including washing powder, cleaning materials and disinfectant, nappies, formula milk, non-prescription medication, the opportunity to maintain interpersonal relationships and a minimum level of participation in social, cultural and religious life were held to be essentials. Travel by public transport to appointments with legal advisers, telephone calls to family members or in connection with asylum claims and writing materials are capable of being essentials at the Secretary of State’s discretion. Toys are not essential needs (*R (SG) v. Secretary of State for the Home Department* [2017]) and courts have been comfortable with adults having only water to drink and children being unable to swim or pay any travel costs outside the school term (*R (Mensah and Bello) v. Salford County Council* [2014]).

European Union law (Directive 2008/115/EC) requires Schengen states to provide a more restricted set of essentials to unlawfully present non-nationals, on top of the basic survival needs required by Articles 2 and 3 ECHR (the right to life and prohibition of inhuman and degrading treatment). These encompass those things required for a person to 'feed, house and clothe himself decently', access emergency and urgent healthcare, preserve family unity, allow children to access basic education and address the 'special needs of vulnerable persons' (*Centre public d'action sociale d'Ottignies-Louvain-la-Neuve (CPAS) v. Abdida* [2015]).

### Income required to access essential needs

The UK 'is not a country in which it is generally possible to live off the land, in an indefinite state of rooflessness and cashlessness' (*R (Limbuela) v. Secretary of State for the Home Department* [2005] at [78]). Access to adequate accommodation and other essential needs is dependent on access to financial resources. It is impossible to identify a precise income required to secure adequate accommodation due to the variability of rents across the UK. Local housing allowances give some insight into the cost of rented housing at the lower end of the market in different areas, ranging from £95 to £347 per week for a three-bedroom property in England (Valuation Office Agency, 2013). However, it may be possible to rent adequate accommodation for less than the LHA, while individuals who require a specially-adapted property or refuge accommodation may have to pay significantly more (*MA* [2016]; *Burnip v. Birmingham City Council* [2012]).

Essential needs other than housing are easier to price; Fitzpatrick et al (2016) acknowledge as much by setting their destitution threshold *after* housing costs, as does the Home Office by supplying asylum seekers with accommodation *plus* a cash or voucher allowance. In *Refugee Action* [2014], this allowance was held to be too low to meet asylum seekers' essential needs because it had been calculated on the basis of a deficient list of essentials *and* had not been uprated in line with inflation. At this time the basic rates, established by the Asylum Support Regulations 2000, were:

- single adult £36.62
- couple £72.52
- lone parent £43.94
- 16- or 17-year-old £39.80
- under 16 £52.96
- supplements: one- or two-year-old £3; under one-year-old £5; pregnant £3
- maternity payment £300.

The rates set in 2000 represented 70% of the adult rate and 100% of the child rate of Income Support, but by the time of the judicial review adults received 49% to 64% of Income Support, children 81% or 61% depending on age. Subsequently, the level of support was amended to £36.95 per person of any age – an increase for most adults, but a cut for lone parents and children – with the supplementary payments for very young children and pregnancy retained at the same level. This was increased to £37.75 in February 2018 (Asylum Support (Amendment) Regulations 2018). Given that many claimants saw a further reduction of an already-inadequate income following the judicial review, it must be questionable whether the present arrangements would stand up to a further challenge in the courts. However, for the time being they form the basis of the chief contender for a legal destitution threshold.

The courts, though, have not taken a uniform approach to treating asylum support as an income floor. Despite the success of *Refugee Action's* application, the High Court a short time later found the levels of support recently held inadequate for asylum seekers to be a 'not unreasonable, albeit not overly generous' yardstick against which to assess the adequacy of a local authority's provision for children (*R (PO, KO, RO) v. Newham LBC* [2014] at 46). The Court of Appeal rejected outright representations that the asylum regulations represent a 'destitution threshold' (*R (SG) v. Secretary of State for Work and Pensions* [2014] at [101-105]). The household benefit cap had reduced the three applicants' weekly incomes after housing costs to £104.50, £230 and £200, while similarly-composed asylum seeking households would have received £260.78, £202.82 or £202.82 respectively. The court

found that ‘the circumstances of these three families ... do not approach the level of destitution’. On the other hand, Hurley recognises the potential for a reduction in eligibility of £11 due to the benefit cap – a far smaller drop in income than experienced by any claimant in SG – to result in severe hardship. Collins J observed: ‘for someone ... who is on the brink of inability to provide for himself ... even relatively small sums can tip them into destitution’ (*Hurley v. Secretary of State for Work and Pensions* [2015] at [33]). This followed a case in which delays in accessing a benefit, rather than the level of payment, were found to be unlawful because the applicants were left unable to meet their essential needs, including food, energy, rent and transport (*R (C) v. Secretary of State for Work and Pensions* [2015]).

Webster (2014) suggests the sanctions for non-compliance with conditions for the receipt of certain benefits are ‘deliberately designed to reduce people ... to complete destitution’. No clear judicial statement as to whether a sanction results in destitution was found in the review. Nonetheless, it is difficult to dispute Webster’s conclusion where claimants who receive no hardship payment are concerned, as income after housing costs for all single claimants and claimants with children subject to the benefit cap will be less than the amounts deemed inadequate in *Refugee Action* (see Simpson, 2015; 2018). Those who receive a hardship payment – 60% of the suspended benefit – will generally be above the *Refugee Action* threshold, but they would also have expenses that an asylum seeker does not. McKeever (2009, p. 165) suggests that there is an ‘ongoing duty’ to monitor the extent to which sanctions result in destitution, grounded in Article 3 ECHR.

Essential needs include items and services that are required in connection with a disability (*R (A) v. National Asylum Support Service* [2003]). However, asylum seekers’ disability-related needs are the responsibility of local government under s21 of the National Assistance Act 1948; support provided by the Secretary of State need only take account of the needs of ‘an ordinary child or adult with no special peculiarities or disabilities’ (*R (Ouji) v. Secretary of State for the Home Department* [2002] at [48]). As to the cost of meeting disability-related needs, although the care component of the Disability Living Allowance is paid for the purpose of meeting these needs, the limited number of rates at which it is payable mean it is an unreliable guide to an individual’s actual disability-related costs (*R (Turner) v. Barnet Housing Benefit Review Board* [2001]).

## The legal definition and the JRF definition of destitution

Legal definitions of poverty do not always mirror social science definitions. A relative definition of poverty should assess whether an individual or household can afford to access the range of goods and services necessary for a normal lifestyle in contemporary society (Townsend, 2010). Absolute or primary poverty implies inability to afford the most basic physical needs for survival and health (Rowntree, 2000). The UK’s relative and absolute low income thresholds are respectively set at 60% of the median income in the present year or a baseline year (2010–11) and do not appear to correspond to either Townsend’s or Rowntree’s definition of poverty. The relative low income threshold falls some way short of the minimum income standard, based on the income necessary to access a consensually-derived set of necessary goods and services (Padley and Hirsch, 2017). The absolute low income threshold makes no reference to the cost of basic survival needs but can be used to track rising or falling real incomes at the lower end of the distribution (Department for Work and Pensions [DWP], 2017d). Similarly, while the JRF definition of destitution overlaps to a considerable extent with the legally-informed definition presented here, the two are not identical.

The two destitution standards differ in both the list of items recognised as essential needs and the weekly income identified as necessary to access those needs. A further key difference is that whereas Fitzpatrick et al (2016) regard a household as destitute if it is unable to meet its essential needs from its *own* resources, social security regulations and the courts expect people to explore *any* possible avenues of support before accepting that they are destitute. Self-evidently, someone who *could* afford to access adequate accommodation and other essential needs, but chooses not to, cannot be regarded as destitute (*S and J* [2016]). The rules governing Universal Credit hardship payments take this a step further, so that the claimant must have ‘made every effort to access alternative sources of support to meet [his or her essential] needs; and ... to cease to incur any expenditure which does not relate to such needs’ (Universal Credit Regulations 2013 reg 116). Applicants are advised to reduce discretionary expenditure, access any savings or investments and seek help from relatives, friends, health and social services and charities, although they are not required to seek credit (DWP, undated). Similar demands may be made of Discretionary Housing Payment applicants (Meers, 2018). Mainstream benefits, too, emphasise claimants’ duty to help themselves out of poverty, typically through jobseeking (Watts et al, 2014), and the courts are clear that ‘true destitution is not the same as deciding not to support a family through work, though able’ (*R (AC & SH) v.*

*Lambeth LBC* [2017] at [62]). Many individuals who seek relief of destitution will be barred from the paid labour market because of their immigration status. Nonetheless, they must exhaust any savings and look to friends or relatives who might be able to provide cheap or free accommodation, other members of the household who are entitled to work or claim benefits, ex-partners with possible liability for child maintenance and charitable organisations before turning to the state (*AC & SH* [2017]; *R (OK) v. Barking and Dagenham LBC* [2017]; *R (O) v. Lewisham LBC* [2016]).

The most important need identified by Fitzpatrick et al (2016) is shelter, which they find to be lacking if a person has slept rough for even one night in a six-month period. Heating and lighting are also classed as essentials. The asylum support standard requires not merely shelter but safe, furnished accommodation with all utilities (presumably including water as well as heating and lighting). Neither standard appears to place any emphasis on security of tenure. Social security legislation similarly identifies accommodation and heating (but not lighting or water) as essentials. Both the legal standard and the JRF standard potentially fall short of the aspiration in Article 11 ICESCR to housing that meets current cultural and technological requirements and that in Article 31 ESC to accommodation that is not only safe for habitation, but offers security of tenure. However, both appear sufficient for ECHR compliance, with overcrowded or rodent-infested housing and even short spells of street homelessness held compatible.

Besides shelter, heating and lighting, Fitzpatrick et al identify food, clothing, footwear and basic toiletries as essentials. The requirement for food, which also features in the social security legislation, is not met if an individual, or his or her children, have fewer than two meals a day for at least two days in a six-month period. This is not directly equivalent to the asylum support standard, which requires access to sufficient food to sustain health, as much affected by *what* is eaten and the individual's own dietary needs as by the number of meals per day. So whereas the JRF standard might be compared with Article 11 ICESCR, which encompasses a right to nutritionally and *culturally* acceptable food – with several meals a day relevant to both of these tests – the asylum support standard perhaps aligns more closely with Article 11(1) ESC, which more narrowly requires protection from causes of ill-health. The test for adequacy of clothing (also an essential in the social security legislation) and footwear seems broadly equivalent in both cases, with asylum seekers recognised to require sufficient clothing to protect against illness and the JRF definition referring to appropriateness to the weather. In each case, echoes of Article 11(1) ESC are again apparent. The final element of the JRF standard is basic toiletries, defined as soap, shampoo, toothbrush and toothpaste. The headline requirement for asylum support purposes is the same – essential toiletries, although it is not clear what toiletries the Home Department classes as essential. The reference in the social security legislation to hygiene as an essential need is perhaps broadly equivalent. Again, access to these hygiene-related items is in keeping with Article 11(1) ESC as well as Article 14 ICESCR (the right to the highest attainable standard of health).

A number of additional items are essentials for asylum support purposes but absent from the JRF criteria.<sup>3</sup> Fitzpatrick et al's non-inclusion of primary and urgent secondary healthcare is readily explicable as this is a question of access to NHS services rather than income. Similarly, education for children is generally available free of charge, although the cost of travel to school is not specifically included in the JRF standard, which could have implications for some children's enjoyment in practice of their right to education (P1-2 ECHR; Article 28 UNCRC). The JRF definition also omits the cost of other activities for the socialisation of children; while such activities are arguably necessary components of the child's rights to development, cultural participation and play in Articles 6, 27, 29 and 31 UNCRC, it is also the case that opportunities may be available free of charge. Asylum seekers must also have some means of contacting the emergency services, which it is not evident would be covered by the JRF standard and could be necessary for the protection of the right to health or even life (Article 2 ECHR). Household cleaning products, items for babies including nappies and formula milk, non-prescription medication and a minimum of social participation (for adults) are also additional items to which asylum seekers are supposed to be entitled. Finally, basic furniture, white goods, kitchen utensils, cutlery and crockery plus cots, high chairs or sterilising equipment if required are considered essentials for asylum support purposes, but are supplied with housing rather than taken into account in the calculation of weekly allowances. As these are generally one-off purchases rather than ongoing expenses, it is equally defensible that they are not taken into account by Fitzpatrick et al.

**Table 1.1: Comparison of definitions of essential needs derived from immigration and asylum law, social security law and the JRF definition of destitution**

Essential needs in asylum support		Essential needs in social security law	Essential needs in JRF definition of destitution
Recognised by Secretary of State	Safe, furnished accommodation	Accommodation	Shelter
	All utilities	Heating	Heating and lighting
	Sufficient food to avoid illness or malnourishment	Food	At least two meals per day
	Essential toiletries	Hygiene	Basic toiletries – soap, shampoo, toothbrush, toothpaste
	Access to primary and urgent secondary healthcare	<i>Access to NHS services will normally cover</i>	<i>Access to NHS services will normally cover</i>
	Means to travel to appointments	-	-
	Means of communication with emergency services	-	-
	Access to education for children	<i>Education is free but there may be travel costs</i>	<i>Education is free but there may be travel costs</i>
	Contribution to children's wider socialisation costs	<i>Free activities may be available</i>	<i>Free activities may be available</i>
	Suitable clothing to avoid danger of illness	Clothing	Clothing appropriate to the weather

<b>Recognised in Refugee Action</b>	Household cleaning products	<i>Hygiene may include</i>	-
	Nappies and formula milk	-	-
	Non-prescription medication	-	-
	Minimum level of participation in social, cultural and religious life	<i>Free activities may be available</i>	<i>Free activities may be available</i>
<b>Secretary of State's discretion (so may not be essential needs)</b>	Travel to appointments with legal advisers	-	-
	Telephone calls to family members/legal advisers	-	-
	Writing materials	-	-
		-	-

A comparison of income standards is more straightforward. As noted above, it is all but impossible to put a price on adequate housing, but since asylum support is paid and the JRF destitution threshold calculated *after* housing costs this is no obstacle. Despite its sparser list of essential needs, for small households the JRF standard is (relatively) more generous. However, since Fitzpatrick and others add only £20 per child to their threshold, whereas asylum support at the 2015-2017 rate increases at a rate of £36.95 per child, asylum support will exceed the JRF figure by a progressively greater amount as family size increases. Table 1.2 compares the rates of asylum support in this period with the JRF destitution threshold and, where possible, equivalised median income.



**Table 1.2: Comparison of asylum support with the JRF destitution threshold, and equivalised median income (taken from supporting data tables to DWP, 2017)**

Household type	Asylum support, 2015-2017		JRF destitution threshold		Equivalised median income (AHC, 2015-16)
	Cash	% of equivalised median income	Cash	% of equivalised median income	Cash
Single adult	£36.95	15.5	£70	29.3	£239
Adult couple	£73.90	17.9	£100	24.2	£413
Lone parent, 1 child	£73.90	23.0	£90	28.0	£322
Lone parent, 2 children	£110.85	22.4	£110	22.2	£495
Couple, 2 children	£147.80	22.1	£140	20.9	£669



Comparison with median income allows the destitution thresholds to be set alongside other indicators of income adequacy. The UK's relative low income threshold, a key measure of child poverty, is set at 60% of equivalised median income. Article 13 ESC requires social assistance to be paid at a level not manifestly below 50% of the equivalised median, establishing an income floor (albeit not one that is recognised by UK law) for anyone with access to the mainstream social security system. However, it is not clear that this stipulation applies after housing costs (Simpson, 2018). The minimum income standard, which represents the income required to access the goods and services seen as necessary for a 'minimum socially acceptable standard of living', is between 80% and 87% of the median for non-pensioner households (Padley and Hirsch, 2017, p. 1, p. 10). A key comparison for present purposes is with the income after housing costs of a household in receipt of a Universal Credit or Jobseeker's Allowance hardship payment, as this is specifically targeted at households that would otherwise be unable to meet their essential needs (and would therefore be destitute). In 2015-16 this was £43.86 (18.4% of equivalised median) for a single claimant, £91.88 (22.3%) for a couple, £161.26 (32.6%) for a lone parent with two children and £209.28 (31.3%) for a couple with two children.<sup>4</sup> This places adults-only households between the asylum and JRF destitution thresholds; households including children above both. There is no income standard for ECHR compliance; even an entirely cashless existence will not necessarily contravene Article 3. Article 8 likewise confers no general right to an income, only the income necessary to sustain family life, which will depend on individual circumstances and could in some cases be zero.

## The state's duty to prevent/relieve destitution

Lord Ellenborough may have considered that the 'law of humanity' demands protection from destitution (*Inhabitants of Eastbourne* [1803]: 107), but this does not mean the state will always be subject to a duty to support a destitute individual, or one at risk of destitution. If such a common or natural law protection against destitution exists, it can be chipped away through primary legislation. The Court of Appeal was able to find the Social Security (Persons from Abroad) Miscellaneous Amendments Regulations 1996 unlawful in part because they contravened this law of humanity by withdrawing social protection from certain classes of migrant (*R v. Secretary of State for Social Security, ex parte Joint Council for the Welfare of Immigrants* [1997]). Simon Brown LJ argued (p. 292):

"The Regulations necessarily contemplate for some a life so destitute that to my mind no civilised nation can tolerate it. So basic are the human rights here at issue that it cannot be necessary to resort to the European Convention on Human Rights to take note of their violation."

However, once Parliament had effected the same set of restrictions through the Asylum and Immigration Act 1996, this took precedence over the common law. Subsequent case law confirms that Parliament has the power to impose destitution (*R (M) v. Slough BC* [2008]), albeit that it has been suggested that such a 'disgraceful result' could only be achieved through 'express words of the utmost clarity' in the legislation and not ungenerous interpretation of an ambiguous statute (*Chief Adjudication Officer v. Webber* [1998], 636).

Some classes of people must be protected from destitution – this notably applies to asylum seekers, although given that the ultimate source of the duty is in EU law (Directive 2003/9/EC) it is possible that Parliament will be free to reduce this protection following the UK's withdrawal from the European Union. In other cases – for example, failed asylum seekers – a *power* to provide support may transform into a *duty* to do so when a person's living conditions risk violating Articles 3 or 8 ECHR. Although Collins J argues that 'it would be surprising if the standards of the ECHR were below those believed 200 years ago to be applicable as the law of humanity' (*R (Q) v. Secretary of State for the Home Department* [2003] at [72]) the European Court of Human Rights (ECtHR) has been reluctant to read specific social entitlements into the Convention rights (Williams, 2013). Even if, as O'Conneide (2008) suggests, the UK courts have since 2000 found the ECHR a useful tool for the defence of a minimum standard of living, it remains the case that this minimum standard may be lower than that recognised to constitute destitution in the asylum support system (*Mensah and Bello* [2014]). Human rights safeguards against destitution are also ultimately subject to the same weakness as the common law, as s4 of the Human Rights Act 1998 allows Parliament to legislate contrary to the ECHR if it wishes.

Where the ECHR requires the prevention, relief or mitigation of destitution, public authorities must act accordingly unless prohibited from doing so by primary legislation (Human Rights Act 1998 s6). A claim for material support most obviously arises when a 'degree of degradation ... significantly below [the statutory] definition of destitution' brings about a risk of violation of Article 3 (*R (S) v. Secretary of State for the Home*

*Department* [2003] at [8]). However, the views of Laws LJ similarly show the UK judiciary to be receptive to the possibility of a right to a minimum – or minimal – income under Article 8 ‘where some provision is needed for the avoidance of destitution’ (*AM v. Secretary of State for Work and Pensions* [2014] at [21]). Neither article is explicitly directed at the protection of destitution – Article 3 prohibits inhuman and degrading treatment while Article 8 guarantees respect for family life – so it is necessary to examine judicial interpretations to determine the circumstances in which destitution might require state intervention.

Article 3’s absolute prohibition of torture, inhuman and degrading treatment means it is arguably the ECHR’s most important and powerful provision. The chief problem faced when seeking to deploy the article as a means of protection against destitution is that degrading treatment is defined as much by the impact on the affected person as by the conditions experienced. Destitution can, but does not inevitably, result in degradation and consequently support to prevent breach of Article 3 need not always cover all essential needs (*NA (Sudan) v. Secretary of State for the Home Department* [2016]; *R (AU) (Kenya) v. Secretary of State for the Home Department* [2006]). Further, the state is only responsible for preventing degradation if it results from treatment by the state. While the courts do not accept that all destitution ultimately results from state action (Fredman, 2006), it is the case that failure to provide support will be regarded as ‘treatment’ if support would be available to other, comparable classes of person in similarly destitute circumstances. For example, the denial of support to ‘late’ asylum seekers (those who do not register their claim as soon as reasonably practicable following arrival in the UK) does constitute treatment since support is provided to other asylum seekers (*Limbuela* [2005]). Harvey’s (2015) stronger language, referring to ‘a law and policy framework that deliberately engineers poverty and destitution’, more vividly conveys the same conclusion, that failure to provide support is not mere inaction, but a deliberate policy decision taken in full knowledge of its likely outcome. On the other hand, failure to provide asylum seekers with a guaranteed right to housing does not constitute treatment if citizens enjoy no such right (*R (EU) v. Secretary of State for the Home Department* [2009]).

Treatment becomes degrading ‘if to a seriously detrimental extent, it denies the most basic needs of any human being’ (*Limbuela* [2005] at [7]). Denial of a person’s most basic needs appears to be a relatively straightforward test – inability to access shelter, food, warmth, somewhere safe to sleep and hygiene facilities; medical needs may also qualify (*RM v. Secretary of State for the Home Department* [2017]). When this occurs to a seriously detrimental extent is less clear. Treatment becomes degrading when it ‘humiliates or debases an individual ... or arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance’ (*Pretty v. UK* [2002]). This is a movable threshold: Hickinbottom J suggests that ‘in the ordinary course [the Article 3] threshold may be crossed if ... a person was obliged to sleep in the street, or was seriously hungry, or was unable to meet the most basic requirements of hygiene’ (*R (EU) v. Secretary of State for the Home Department* [2009] at [85]). However, depending on their age, health and perhaps gender, some individuals might be able to sleep rough for a short (or even extended) period without degradation, as long as they have sufficient food and access to washing facilities (*R (Zardasht) v. Secretary of State for the Home Department* [2004]). Others might suffer degradation before reaching the point of street homelessness (*Limbuela* [2005]). Feldman’s (2013: 346) interpretation of *Limbuela* as a statement that ‘Article 3 guarantees ... protection against destitution and degradation’ seems over-optimistic, but the article undoubtedly requires action to mitigate destitution in certain circumstances.

The right to respect for family life similarly confers no right to protection from destitution, but destitution can result in its violation. Notably, when ‘the welfare of children is at stake, Article 8 may require the provision of welfare support in a manner which enables family life to continue’ (*Anufrijeva v. Southwark LBC* [2003] at [43]). It would also be unlawful to return a child to a country where he or she would be at risk of ‘destitution and exploitation’ (*AM v. Secretary of State for the Home Department* [2017] at [20]). Under the Children Act 1989, local authorities are subject to a specific duty to provide accommodation for children in need (s20) and a general duty to safeguard and promote the wellbeing of children in need, including the promotion of their upbringing by their families (s17). The courts recognise that Article 8 will normally require whole-family support on the basis of the child’s need to be brought up by a parent (*R (PK) v. Harrow Council* [2014]). However, the level of assistance required to enable family life to continue may be less than that required to prevent destitution, as long as a ‘minimum level of humanitarian support’ is provided (*Mensah* [2014] at [53]), sufficient to ‘keep the family together’ (*PO, KO, RO* [2014] at [47]). One local authority was found to have discharged its duty to support children in need and enable family life to continue through the provision of emergency accommodation that according to the council met the family’s basic needs, despite having been assessed as a Category 1 hazard in an environmental health inspection (*R (C) v. Southwark LBC* [2016]). No clearer illustration could exist of Edwards and

Billings's (2004, p. 105) observation that where the ECHR does confer a right to housing, it is 'quantitative not qualitative'.

Like the ECHR, the EU treaties confer a limited range of social rights upon citizens. Economically-inactive EU migrants have no entitlement to social assistance from a host state, yet severe poverty is recognised as a barrier to exercising rights of free movement and residence under Articles 20 and 21 of the Treaty on the Functioning of the European Union (TFEU) (*Pensionsversicherungsanstalt v. Brey* [2014]). Again, this can create an obligation to protect children's rights by providing limited financial support. A household headed by a non-EU citizen, but including a child who is an EU citizen, will be entitled to support if the alternative is that the whole family would be forced by destitution to leave the UK or EU (*Sanneh v. Secretary of State for Work and Pensions* [2015]). This is not a right to access mainstream social security, only the income necessary for the right of residence to be realised. The international legal provisions conferring the clearest protection against destitution – Article 13(1) ESC (the right to social assistance), Article 11 ICESCR (the right to an adequate standard of living) and Article 16 ESC (including an implied right to housing) do not form part of UK law and carry little weight in the domestic courts.

## Conclusion

This chapter has examined possible elements of a legal definition of destitution, the extent of the state's duty to prevent, relieve or ameliorate destitution and compared the legal definition to the JRF definition. The clearest legal definition – whose elements overlap with the less-precise definition derived from social security law – is found in statutory provision for the support of destitute asylum seekers. This consists of a list of essential needs, defined by the High Court in *Refugee Action* [2014], and a weekly payment intended to allow the recipient to meet those needs, albeit that case law suggests strongly that the allowance is not, in fact, sufficient to cover all the essentials on the list. These items include adequate, furnished accommodation, to include local taxes and utilities, plus food, toiletries, healthcare, travel to appointments, communication with emergency services, education and socialisation of children, clothing, cleaning products, babies' essentials, non-prescription medication and a minimum of social participation. This represents a more extensive list than that identified by Fitzpatrick et al's research participants. However, the benefit payable to asylum seekers to enable them to access these essentials – £36.95 per person per week until a recent, small uplift – is little more than half of the JRF threshold for a single adult (although almost double that for a child). Furthermore, whereas for Fitzpatrick et al destitution means the inability to meet the cost of one's own essential needs, under the Asylum Support Regulations the essence of destitution is the inability to access one's essential needs by whatever means, so that the allowance payable will be further reduced if the claimant has access to any other lawful sources of support.

Local and central government possess a range of powers to relieve destitution, but are not always subject to a duty to do so. While the judiciary seems to accept that destitution is not desirable, it does not follow that it is unlawful for the state to push some individuals or classes of people into destitution. Even if some commentators have argued that the UK courts are *ahead* of the ECtHR in this field, the circumstances of an individual without access to mainstream social security will have to be particularly abject to qualify for a very minimal level of support. For adults without specific care needs, this is likely to mean a risk of degrading treatment contrary to Article 3 ECHR, normally implying a complete lack of any financial resources combined with a lack of access to shelter, food, warmth or hygiene, sufficient to impact seriously upon physical or mental health. Where children are affected, destitution or the risk of separation from their parents may open up a path to support via Article 8. However, the support received may be limited to the provision of housing that is far from satisfactory by any normal standard or even payment for passage out of the UK. This absence of a general right to protection from destitution is illustrated in the experiences of the research participants that are described in the subsequent chapters.

## 2. A legal perspective on routes into destitution

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### Summary

The complexity of people's lives means it is difficult to identify with certainty the reasons 'why' some people experience poverty or destitution. The experiences of our research participants show that destitution is associated with multiple forms of disadvantage, some of which undoubtedly contribute to the individual's destitute circumstances, while other problems may flow from or be exacerbated by destitution. Each person's pathway to and experience of destitution is unique, yet a number of trends can be identified in the findings. Interviewees did not suddenly plunge from a comfortable lifestyle into destitution. Instead, an already-precarious existence, characterised by one or more sources of vulnerability, could give way to destitution when a further trigger was experienced. The focus of this report is on legal dimensions to destitution, but the potentially justiciable problems that contribute to destitution are often inseparable from, or follow on from, other issues that are not legal in nature. Interviewees' underlying sources of vulnerability took many forms and sometimes had a legal element, such as divorce, certain employment-related matters or criminal justice problems. Often they did not – for example, the breakdown of non-formalised relationships, health problems, caring responsibilities and other sources of labour market exclusion. The triggers that played a more direct role in tipping individuals into destitution were more consistently linked to civil or administrative justice problems, inability to access a legal entitlement or the inadequacy of a legal entitlement to support. Often closely connected, these consisted of social security, debt and housing problems.

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Social security problems were often underpinned by a lack of understanding of one's potential entitlements or of the workings of the system. This lack of knowledge, sometimes in combination with experiences of the system that suggested a lack of support for applicants and claimants, contributed to a perception that financial assistance could be awarded, withdrawn, reduced or suspended on a fairly arbitrary basis. Failure to access, or inadequacy of, social security benefits could be a contributor to problem debts, as interviewees borrowed money for essentials or failed to keep on top of household bills. When unpaid bills included rent and other housing costs, housing security could be put at risk – risk of eviction and/or unfitness of accommodation being perhaps the ultimate manifestations of destitution. There was clear potential for legal or other expert advice to help interviewees address many of these problems, and there were cases in which it unquestionably did help. However, as Chapter 4

demonstrates in more detail, non-recognition of the issues experienced as legal in nature or failure to seek help before reaching a crisis point, combined in some cases with difficulty accessing advice even when it was sought, reduced the likelihood of legal intervention occurring at an early enough stage to arrest the individual's descent into destitution.

## Introduction

The legally-derived definition of destitution set out in Chapter 1 defines the term as lacking access to or the means of obtaining adequate housing or other essential living needs (Immigration and Asylum Act 1999 s95), although the precision with which essential living needs are defined varies depending on the legal source relied upon. It is clear from the qualitative data that most of the interviewees struggled to afford the living costs necessary to keep a roof over their heads and sustain health, or had done so prior to a recent improvement in their circumstances. While some admitted that they were not good at managing their money, more often the basic problem was simply not having enough money to manage. Interviewees invariably struggled with housing costs and frequently went without, or had limited access to, a range of other items identified as essentials in the various sources of a legal definition of destitution. Heating, food, clothing and hygiene are highlighted by the social security legislation (Universal Credit Regulations 2013; Jobseeker's Allowance Regulations 1996). While hygiene was seldom identified as unattainable – in some cases only because free toiletries and cleaning products could be obtained – food, clothing and heating were problematic for many interviewees. Further items from the longer and more precise list of essentials derived from the asylum support system (*Refugee Action* [2014]) were also problematic: council tax, other utility bills, furniture and white goods, essential travel, non-prescription medication and social participation among them. In addition to this, rural interviewees sometimes saw a car as a necessity, while jobseekers and those who had experienced street homelessness often believed a mobile phone was essential for compliance with benefit conditions or finding a bed for the night. There were instances when the prioritisation of alcohol, tobacco, pet food or “the odd McDonald's” contributed to the inability to afford essential items, but in the main there was little reason to believe that all essential needs could be met through the reduction of discretionary spending alone.

Fitzpatrick et al (2016) identify a diversity of ‘routes into destitution’. Key contributing factors include problems with debt, social security, health, employment, relationships and the cost of living as well as factors specific to migrants (see Table 2.1).

**Table 2.1: Problems/issues experienced in previous 12 months by destitute service users in *Destitution in the UK*, by sub-group**

Experienced in last 12 months	Migrant (%)	UK complex needs (%)	Other UK (%)	All (%)
Getting behind on bills	31	56	73	57
Serious debt	23	27	43	33
<i>Any financial problem</i>	<i>36</i>	<i>57</i>	<i>75</i>	<i>60</i>
Benefit delays	25	45	42	40
Benefit sanctions	21	34	31	30
<i>Any benefit problem</i>	<i>36</i>	<i>57</i>	<i>53</i>	<i>51</i>
Serious health problems	24	32	29	29
Family relationship breakdown	15	40	14	25
Divorce or separation	16	18	10	14
Domestic violence	9	18	4	11
<i>Any relationship problem</i>	<i>28</i>	<i>53</i>	<i>22</i>	<i>36</i>
Eviction	13	26	16	19
Loss of job	20	13	16	19
Reduced hours or pay cut	7	3	8	6
<i>Any job problem</i>	<i>23</i>	<i>15</i>	<i>21</i>	<i>19</i>
Coming to the UK to live	16	1	1	4
None of these	11	7	7	8



A similar range of issues features in the 2017 interviews. Only in rare cases is it possible to identify a single life event as the defining feature of an individual's journey to destitution. Rather, a sequence of events tends to occur, consisting of an initial event (or combination of events) that reduces income, increases living costs or both, leading directly or indirectly to subsequent triggers that tip the individual into destitution. The initial set of events may or may not include a justiciable problem and typically includes family breakdown or domestic abuse, loss of or poor-quality employment, health problems affecting the interviewee or a family member and occasionally the legacy of past criminal convictions. The second-level problems associated with a further deterioration in interviewees' circumstances – and the descent from reduced means or poverty into destitution – more consistently involve civil or administrative justice issues. Loss of income leads to reliance on social security and, in combination with unaffordable living costs, debt. Problems with a social security claim (or lack of access to the system) and unsustainable debt lead to housing problems, the primary manifestation of destitution for many of the research participants, while the struggle to keep up with housing payments leads to the neglect of other essential needs. This chapter highlights the features of interviewees' pathways to destitution that can be characterised as legal in nature and how other issues, not strictly legal in themselves, contribute to or flow from civil, administrative or criminal justice problems. This is a necessary precondition to subsequent chapters' discussion of how intervention to address a legal issue might have prevented destitution; whether the resolution of an initial, non-legal problem might have reduced exposure to a subsequent legal problem forming part of the pathway to destitution or the contribution of legal intervention to navigating a route out of destitution.

## Underlying sources of vulnerability for destitute individuals

As noted above, there is considerable continuity between the issues previously identified by Fitzpatrick et al as characteristic of the experience of destitution and those affecting participants in the present study. Separating causes from consequences is challenging – ultimately, destitution is a vicious circle for at least some of those who experience it and many of the problems highlighted will be both. However, the analysis presented here shows that a distinction can be drawn between the 'underlying' factors discussed in this section and the 'triggers' in the next. The underlying issues themselves – broadly categorised as family, employment, health and criminal justice issues – do not usually lead directly to destitution, although they can result in poverty. Some problems will be amenable to legal advice and resolution, but there was often insufficient evidence in the data to determine if, for example, employment law was breached or if employers were acting within their rights to terminate an interviewee's employment. Without resolution, these problems – alone, or in combination with each other – bring about a loss of income and/or increase in living costs that produces *vulnerability* to destitution should one of the trigger events highlighted in the next section occur. Destitution might manifest in homelessness, caused by a social security problem, but the individual would not have been vulnerable to social security problems were it not for a previous loss of employment, which might in turn have followed a health or family problem. The underlying causes are sometimes legal in nature; often they are not, but the triggers to which they lead normally are legal issues.

Family problems, most commonly divorce or separation from a spouse or partner, were frequently reported by the 2017 interviewees. Care must be taken in assuming that if a destitute interviewee had experienced relationship breakdown, this was a major cause of destitution – poverty is a significant strain on relationships (Stock et al, 2014), so the pathway to destitution may have been embarked upon at an earlier stage. Several interviewees' experiences showed the strain that destitution could place on family solidarity, as well as friendships. Family issues can be legal in nature, and were for some interviewees who had experienced divorce, sought or had to pay child maintenance or been involved in abusive relationships (discussed below). In other cases, the family problem was not in itself justiciable, but paved the way to other legal issues by contributing to loss of employment, rendering housing unaffordable, leading to a need to prove entitlement to social security or increasing vulnerability to financial problems through the loss of a potential support network. For five interviewees, there was evidence of a fairly direct progression from family or relationship breakdown, to a legal problem, to destitution. Two were faced with unaffordable housing costs after being left by a partner, while others had had to leave their accommodation or a job after the breakdown of a relationship with a partner or parent. 'Jennifer's' story, which is highlighted in Chapter 5 as an example of the clustering of justiciable and non-justiciable problems and the potential role of legal or other specialist advice, involved particularly complex family circumstances. These included a daughter's health problems, care arrangements for the interviewee's grandchildren and difficulties (including a possible family dispute) around access to the related social security benefits.

As with family issues, health problems were central to interviewees' experiences of destitution, as with poverty more generally (Marmot, 2010; Benzeval et al, 2014; Elliott, 2016), but it was often difficult to determine whether they acted as cause or consequence. For example, ill health could be a barrier to employment, helping to keep the interviewee in severe poverty, while itself being exacerbated by poor quality or cold housing (Wilkinson, 1999). In a minority of cases, health problems flowed from justiciable problems, such as an industrial accident or domestic abuse. For one interviewee, private healthcare costs appeared to be a significant contributor to destitution, and it seemed that these were only incurred because of a misunderstanding of the interviewee's own legal position. Despite being a UK citizen, the interviewee (a female with complex needs) had elected to pay for healthcare in the Republic of Ireland on the basis of "unfortunate experiences in the past" that had led her to believe that she would be "deported" if she used the NHS.

Loss of employment or labour market exclusion was a recurring feature of interviewees' pathways to destitution. As noted above, this was often, although not always, closely linked to another of the underlying sources of vulnerability, most often ill health, disability or caring responsibilities, sometimes family breakdown or past experiences of crime, with employment-related costs and lack of formal qualifications playing an exacerbating role. Consequently, in many cases the interviewee's lack of paid employment was not in itself a justiciable matter. There were exceptions, notably an interviewee who claimed she had been "basically sacked" when she revealed she was pregnant, indicating a clear unmet need for discrimination advice. Pregnancy- and maternity-based discrimination continues to be an issue for female employees, despite legal protections (Salihu, 2012; Adams et al, 2015), and there was no indication that the interviewee had sought legal advice or a remedy. In addition, a small number of participants were unable to take on paid work because of their immigration status. Besides those whose destitution was closely associated with labour market exclusion is a small group of interviewees who can be characterised as the working destitute, with what Bailey (2016) terms 'exclusionary employment' failing to improve their financial situation or even entrenching their predicament because they have no means of escaping their circumstances. Again, reported experiences of exclusionary employment – such as juggling several zero-hour jobs or living from one short-term contract to the next – were not always indicative of a justiciable problem, but two interviewees' (both male UK nationals) accounts did appear to point to possible grounds for legal intervention. Each had worked or was working without remuneration. One had gone three months without pay until his employer was sent to prison; the new owner of the business was paying salaries and the interviewee was now working around 20 hours per week, but he did not know whether this was contractually guaranteed or not and the appointment was to be "reviewed after Christmas". The second interviewee in this position was in the 'complex needs' group of participants<sup>5</sup> and appeared to be in a particularly vulnerable situation. He reported working as a cleaner three days per week (for an unspecified number of hours) in exchange for interest-free loans, some food and occasional small amounts of money. The arrangement also appeared to involve the "friends" for whom the interviewee worked having near-complete control of his finances, which the interviewee welcomed on the basis that when managing his own money, "I used to go out and just waste it". A female interviewee, again with complex needs, also experienced what she viewed as exclusionary employment, working as a musician in various churches, some of which paid a small "honorarium" while others made no payment. However, it was not immediately clear that those congregations that expected musicians to work on a voluntary basis were breaking the law.

Experiences of crime – whether as victim or offender – form the final recurring source of vulnerability to destitution. Domestic violence – disproportionately likely to affect women living in poverty, but also a contributor to future poverty (Fahmy et al, 2016; Slabbert, 2017) – in particular cast a long shadow over some interviewees' lives. Participants who had been victims of domestic abuse reported being forced to leave jobs by an abusive partner, losing work because of being blamed for what had happened by members of the employing organisation or having to relocate to escape an ex-partner. The impact on mental health could harm employment prospects for years after the end of the relationship. Abuse was mainly experienced by female interviewees at the hands of male partners, but one woman had grown up with an alcoholic and "extremely physically violent" father, while a male interviewee said a previous female partner had attempted to kill him. The effects of criminal convictions could be felt for as long as those of victimhood. Two interviewees had become homeless upon leaving prison<sup>6</sup> and fines incurred some years previously remained a significant financial burden for another. None of the interviewees cited their criminal records as a barrier to employment – those who had been to prison had more immediate concerns relating to housing, social security and addiction – but the literature highlights the problems of reintegration into the labour market that ex-prisoners face (Loucks et al, 1998; Dwyer, 2013).



## Legal/justiciable triggers of destitution

The issues highlighted in the previous section – family breakdown, ill health, labour market exclusion and experiences of crime – produced vulnerability to destitution by reducing income or increasing living costs. Interviewees then tended to experience one or more of three main second-level triggers of destitution. Reliance on social security benefits, non-payment of rent or other household bills and unsustainable borrowing all flow from the inability to make ends meet through earned income. When a problem occurred with social security, or a previously understanding or passive creditor elected to pursue a debt, a household that had previously been ‘just about managing’ (May, 2016; Wright and Case, 2017) could quickly find itself unable to afford its essential needs. This could manifest in large rent or utility arrears or inability to purchase food, clothing or toiletries on a day-to-day basis. The three types of issue highlighted in this section – social security, debt and housing – can be more consistently characterised as justiciable in nature, even if interviewees did not always recognise them as ‘legal problems’, and tended to form the focus of the advice-seeking behaviours described in Chapter 4. Again, there are close connections between the three categories of trigger, with indebtedness associated with a variety of social security problems (although there could be other causes) and shortfalls in housing benefit a frequent reason for rent arrears.

### Social security

Most interviewees were in receipt of some sort of social security benefit, with the small number of UK citizens who were *not* currently claiming any benefit generally having done so in the relatively recent past. Some of the non-UK citizens had no history of social security claims, often because the recent tightening of residency requirements for social assistance benefits had caused them to be ineligible, in one case because the interviewee did not have a UK bank account. However, even a few of those with no eligibility for out-of-work benefits had received, or were receiving, child-related or in-work benefits. Interviewees’ experiences did not speak to a vision of social security as a reliable, rights-based system guaranteeing each citizen a minimum standard of living (Marshall, 1981; 1992). Instead, benefits were portrayed as liable to rise, fall or disappear at the whim of a largely unaccountable decision-maker, or increasingly a computer, with the decisions of appeal tribunals seen as equally arbitrary. Consequently, it seemed taken for granted that benefits could not be relied on and that at times the claimant would have to fall back on the more or less accessible, dependable and stigmatised support available through discretionary welfare systems provided by local government or the voluntary sector.

This perspective flowed from two common experiences of the benefits system, which underline the position of social security as a source of legal need. First, as an already-complex system undergoes considerable change, including the introduction of new disability and social assistance benefits (Welfare Reform Act 2012), interviewees’ understanding of their rights to support or the purpose and operation of the benefit they were receiving could be very limited (see Harris, 2013). Second, a significant number of interviewees had arrived at their present state of destitution at least in part because of social security-related issues. Falling through gaps in the safety net, having a benefit suspended, terminated or reduced (including the recovery of debt) or delays in receiving payments, typically at times of transition between benefits or between employment and out-of-work benefits, were frequently associated with inability to afford essentials (Patrick, 2017; Loopstra et al, 2018). Conversely, an adequate and stable, even if relatively meagre, benefit income could be viewed as the key to achieving greater equilibrium in a chaotic life.

Claimants’ lack of knowledge about their social security entitlements points to a need for access to specialist advice and wider measures to raise citizens’ awareness of their legal rights. A key manifestation was a tendency to attribute almost any reduction of benefit income to one of two features of the system with a relatively high media profile: sanctions and the reduction of housing benefit for under-occupying tenants (popularly referred to as the ‘bedroom tax’). While a significant number of interviewees clearly had experienced sanctions, others employed the term erroneously. For example, being “forced off” Employment and Support Allowance (ESA) and “forced to look for work” is not one of the “new sanctions”, as one interviewee perceived, but a matter of being moved to a different benefit, presumably Jobseeker’s Allowance. Various interviewees thought the interruption of a Child Tax Credit payment or reduction of eligibility for housing benefit or council tax support resulted from a sanction, but none of these are sanctionable benefits. When more credible reports of having been sanctioned were made, this was usually the result of missed appointments. Some claimants in these circumstances felt aggrieved because letters informing them of the appointment were received after the date when they should have attended or were sent to the wrong address, reflecting concerns about miscommunication highlighted by Oakley (2014). Others, who had not been sanctioned, were nonetheless conscious that they were running a risk if,

for example, they displayed reluctance to apply for jobs they did not think themselves physically capable of doing. Although – as shall be discussed below – reduction of housing benefit was a fairly common experience, there were similar instances of the ‘bedroom tax’ being blamed for other reductions of eligibility, especially when these affected council tax support.<sup>7</sup> Deductions from benefits for the recovery of past overpayments or other debts were commonplace and often poorly understood, with claimants simply accepting at face value communications from the DWP to the effect that their benefit would be reduced and that (as they interpreted it) they could not appeal.

Changes to benefit entitlements – whether in the benefit claimed or the amount received – could be particularly confusing for interviewees, so that even transitions that brought a possibility of increased income (for example, from Jobseeker’s Allowance to Pension Credit) could be stressful. Even relatively smooth changes of benefit could be unsettling and the prospect of migration to Universal Credit was a major concern for some, largely due to the anticipated delay between application and first payment, which was prominently reported in the media around the time of the interviews (Elgot and Walker, 2017), and the challenges of online claim management (Onwurah, 2016). At the same time, interviewees with a history of cycling between low-paid work and Jobseeker’s Allowance tended to welcome the arrival of Universal Credit, which would allow them to continue their claim alongside employment as well as offering a more advantageous taper rate when working limited hours (Browne et al, 2016).

Accessing disability- and incapacity-related benefits was one of the factors with greatest potential to bring about improvement in a destitute interviewee’s situation, through a direct uplift in income, removal of the threat of sanctions and sometimes as a gateway to Carer’s Allowance for a partner. However, problems with access, lapses in eligibility and withdrawal of support were widely reported, the effects of which could be exacerbated by the loss of a disability premium if also claiming Jobseeker’s Allowance. Reassessment was a particular source of concern and, for some, a recurring inconvenience and cause of stress or physical pain. One interviewee said the greatest potential improvement in her quality of life would be:

“For them to say, ‘We’re not going to keep sending you to tribunals every year,’ and keep being forced into medical - because when you go for a medical exam they hurt you. They say, ‘Do this, do that,’ and they expect you to do all these exercises. You come away - the last one, I couldn’t do the exercises and they just make you out to be awkward so they try to twist everything round. Every time that you’re going for a tribunal, you don’t even know if you’re ever going to have any money, and if you don’t, you’re left wondering, well, what the hell am I going to do now?”

Female, 50-59, nationality not stated.

Some interviewees, including the woman quoted above, suspected that the purpose of reassessment was simply to find excuses to terminate eligibility. Former Employment and Support Allowance claimants expressed disbelief that they had been found ‘fit for work’, sometimes contrary to their own doctor’s advice, and were having to go through the motions of applying for jobs they considered themselves incapable of doing or risk sanction. There were examples of loss of eligibility at the point of transition from Disability Living Allowance (DLA) to Personal Independence Payment (PIP), which reflected the tightening of eligibility criteria for the new benefit but produced disbelief in interviewees whose conditions had not improved (see Harris, 2014). In keeping with the findings of previous evaluations of assessments for both disability and incapacity benefits (McKeever, 2014; Social Security Advisory Committee [SSAC], 2016), interviewees with mental health conditions were particularly likely to argue that their assessment had been flawed.

Interviewees who experienced a loss of income or refusal of benefit sometimes appealed, although the decision-making process on whether to do so was not always clear and the level of faith in the system varied substantially, from those who felt the default position of decision-makers and tribunal panels alike is to disbelieve claimants to those who had more positive, though less extensive, experiences of the process. This could have implications for willingness to appeal future adverse decisions.

Ultimately, interviewees’ experiences of the social security system illustrate the interconnected and often circular nature of the problems facing destitute individuals. While dependence on social security was often due to labour market exclusion, policy measures justified on the basis that they act as a stimulus to jobseeking – benefit cuts and sanctions – could have the effect of increasing distance from the labour market. The stress, sapping of morale and inability to meet essential needs that flowed from social security problems were a clear obstacle to

jobseeking for some interviewees and, in more than one case, a contributor to a serious deterioration in mental health. Family and social security problems could be similarly intertwined. 'Jennifer', whose story is told in Chapter 5, was clearly not receiving benefits to which she should have been entitled, acting as primary carer to her grandchildren but receiving no child-related benefits, but knew a successful claim on her part would deprive her daughter of income. Inadequate benefit income is also linked to the other triggers discussed in this section, making existing debts harder to repay, prompting further unsustainable borrowing and underpinning housing insecurity. Some participants recognised social security as a legal (or at least specialist) problem requiring expert advice. Nonetheless, acceptance that the system is characterised by arbitrary withdrawal of support, punishment for minor instances of non-compliance with benefit conditions and a futile appeals process was sufficiently widespread to suggest a progressive undermining of the notion that income maintenance is an enforceable right of citizenship.

## Debt

Debt was a widespread issue, closely linked to difficulties with meeting essential needs on a very low income. Whereas difficulties in repaying existing debts could be a trigger for destitution, long-term inability to afford life's essentials was itself a cause of indebtedness and arrears. Types of debt and creditors were many and varied. While some interviewees owed money on loans taken out for unspecified purposes, where causes of debt were identifiable they tended to be living costs. Money was also owed as a result of unpaid fines or parking tickets, sometimes from many years previously, funeral expenses, major purchases like a vehicle, smaller purchases from catalogues or milk delivery. One interviewee had gone through "a bit of a stage of buying loads of stuff" due to mental health issues. Unpaid bills and arrears were more often reported than loans or credit card debt, overdrafts and informal borrowing from family members also featured and a number of interviewees had used (sometimes multiple) doorstep, payday or unspecified lenders (see Hood et al, 2018). Social security issues could lead to debt through advances, budgeting loans or crisis loans as well as overpayment.

The amount of money owed, when stated, varied dramatically, from a few hundred pounds to £25,000, but interviewees tended to assess the precarity of their position on the basis of whether they could meet their weekly or monthly repayments or how vigorously they were pursued by their creditors rather than the total debt (see Hood et al, 2018). Younger females were particularly likely to disclose fears about visits from bailiffs and in one case an incident in which the interviewee's property was damaged in the course of a dispute with a "friend" or "loan shark" to whom she owed money. Local government could be perceived as scarcely more forgiving; various interviewees had been taken to court or threatened with proceedings in connection with council tax or rent arrears (housing associations were sometimes reported to be more understanding). This could extend to a refusal to include rent arrears in a debt relief order or the setting of eviction as a condition for writing off arrears. Problems with paying rent could be self-perpetuating: some interviewees reported they would not be eligible for a transfer before they had reduced their debt to a given level (for example, six weeks' rent), even though downsizing would improve their ability to repay by reducing the gap between housing benefit payments and rent liability. Recovery of past overpayments of social security benefits was viewed as equally non-negotiable. While private creditors varied dramatically in their treatment of debtors, energy and water suppliers were reported to be relatively willing to reduce the sum owed or accept repayment at a low (although still not necessarily affordable) rate. Customers with pay-as-you-go meters could find such arrangements harder to reach as a portion of any credit added to the meter would automatically be deducted for repayment of arrears. So, ironically, could those who had made attempts to pay off debts. One was told "if you've made a payment to us within the last 12 months, you're not entitled to our schemes", and responded by ceasing to make payments.

Some interviewees blamed themselves for their financial problems. This sense of personal responsibility could lead to determination to repay as quickly as possible, despite the impact on the individual's day-to-day standard of living. Others felt more inclined to blame lenders they considered had acted in a predatory or imprudent manner by offering credit (see Coote et al, 2015). One interviewee had not informed his creditors of a change of address, arguing that the "leeches" who had lent him money had no right to expect to recover loans that should never have been offered in the first place: "Only an idiot would've gave us credit, if I think about it now. I really don't see why I should get in a panic about their stupidity." A lone parent felt aggrieved that her housing association had rented items of furniture to her, apparently explaining neither the cost nor that the tenant would never actually own the items, with the charge for the furniture added to her rent but not covered by her housing benefit.

Ultimately, full repayment of debts seemed hopelessly out of reach to many interviewees. In the absence of a successful application for a disability benefit or entry to stable paid employment, making a dent in one debt could only be achieved by borrowing or running up arrears elsewhere or by relying on a food bank or family members to cut other expenditure. Deduction from a benefit payment was widely regarded as the most dependable form of repayment, but had inevitable knock-on effects on the ability to meet current expenses. With the cost of a debt relief order (£90) or bankruptcy (reportedly between £250 and £850)<sup>8</sup> a major deterrent to formal restructuring, various interviewees had attempted – sometimes with support from debt advice services – to negotiate payment arrangements with creditors individually. These efforts could be complicated by debts being passed from the original lender to recovery companies and were not always successful. Some debtors found their creditors would not accept what they considered an affordable repayment – and often responded by deciding not to repay at all – or *did* succeed in agreeing very low weekly payments, only to see the total amount owed continue to rise. A number of interviewees had agreed debt relief orders, usually thanks to relatives or a church fund paying the bill, but were frustrated at the time taken, uncertainty around whether their debt would in fact be written off at the end of the 12-month period and the ability of key creditors – notably local government – to refuse to be part of the DRO. A small number had faced legal action when no agreement could be reached with lenders. Those with cases pending tended to feel confident that the outcome would be in their favour; perhaps unrealistically so, as those who had already been through proceedings usually (with exceptions) viewed them as counterproductive as they simply resulted in additional charges being added to already-unpayable debts.

Despite its prominence in many interviewees' stories, debt was not always recognised as a legal issue. Many interviewees had negotiated with creditors themselves or with limited support, and when advice was sought there could be little evidence of discrimination between sources. Due to general determination to repay debts, advice seeking normally only occurred at the point where this became impossible (see Chapter 4). Ironically, the very agencies most often charged with the relief of destitution and poverty – DWP, HM Revenue and Customs (HMRC) and local government – were among the most tenacious in pursuing debts. Consequently, repayments could amount to a considerable proportion of an already-low income, with certain forms of debt commonly deducted at source from benefit payments. With Jobseeker's Allowance and Income Support payments barely surpassing Fitzpatrick et al's (2016) destitution threshold, a single person dependent on out-of-work benefits as his or her main source of income would almost inevitably be destitute by this standard if making any significant repayments. Applying the legally-grounded definition proposed in Chapter 1, debt could potentially be a symptom of destitution – inability to afford adequate housing and essential utilities – or a cause, with spending on a range of essentials sacrificed in order to make repayments.

## Housing

Housing is central to both the legal and the JRF definitions of destitution. Inability to access adequate accommodation is the first part of the destitution test derived from the Immigration and Asylum Act 1999 and the risk that housing will be unavailable is one of the gateways to a hardship payment in the Universal Credit Regulations 2013 and Jobseeker's Allowance Regulations 1996. Fitzpatrick et al's (2016) consensual definition of destitution places particular importance on shelter, finding that this is lacking if an individual has to sleep rough for one night in a month. Housing was equally central to research participants' experiences of destitution, which almost invariably involved one or more of unaffordable rent; arrears and/or housing the interviewee considered unfit; sometimes risk of eviction and in a minority of cases homelessness, in a few cases including rough sleeping. It does not inevitably follow that no adequate accommodation would have been accessible to these individuals, although this sometimes appeared to be the case. In other cases, keeping up with rent liability could mean foregoing other essentials. For UK citizens, housing problems tended to flow from social security problems; for non-UK citizens, lack of access to social security could naturally be a contributing factor. The penalisation of under-occupation through the social sector size criteria ('bedroom tax') and local housing allowance was a particularly common contributor. Finance could be a barrier to moving to more suitable accommodation, but lack of availability could also be an issue. A few interviewees felt unable to remain in their accommodation because of disputes with the landlord, neighbours or other occupants rather than any financial issue, while for two interviewees release from prison was followed by street homelessness, sofa surfing, an extended stay in a hostel and eventually, in one case, a social tenancy.

At least five interviewees had at some point been unable to access any form of housing, resulting in street homelessness. One asylum seeker had lived in the street with her husband and child for at least a month, but appeared to consider this preferable to her previous accommodation in which the "person we were living [with] treat[ed] us like we are dogs". The effects of rough sleeping could be felt years, even decades, later. Others

had been homeless without having to sleep rough, mainly spending time in shelters or hostels, although in at least one case the shelter was only available over the winter. Less formal solutions included staying more or less temporarily with a friend, relative, colleague or 'good Samaritan' – sometimes paying nominal rent, sometimes providing services like informal childcare in lieu – and even sleeping on an unlawfully-moored houseboat. There was a suggestion that this kind of last-resort housing might become less available due to housing benefit reforms. With the local housing allowance and 'bedroom tax' encouraging claimants to downsize, an interviewee who described her present home as "dreadful" observed: "All my cousins and auntie, they've had to move to smaller accommodation, so it's not like you can just go and live with them." 'Jennifer', profiled in Chapter 5, had been conversely affected by this problem: having recently moved from a three-bedroom to a two-bedroom property, she was now sleeping on the sofa because her three grandchildren had moved in.

As noted, affordability was a key housing-related concern, and this was closely linked to social security issues. In 2016 (p. 33), Fitzpatrick et al found 'some' interviewees' housing benefit was insufficient to meet housing costs; this was arguably the 2017 interviewees' dominant housing-related problem. Most interviewees had no solution other than to make up the deficit from their other income, or where possible to seek smaller accommodation. Usually this shortfall resulted from under-occupancy. Even tenants who were not under-occupying sometimes reported difficulty proving this if children spent part of their time with each parent. As with the other social security issues discussed above, certain interviewees simply did not understand why their benefit would not cover their housing costs. Arrears flowing from inadequacy of housing benefit could be self-perpetuating for those in social housing, as local authorities would refuse to put tenants with outstanding rent payments on their transfer list, even if the root of the problem was under-occupancy. Non-EEA citizens and recent arrivals from within the EEA, lacking access to housing benefit, faced even greater affordability problems and there were examples of churches and mosques providing assistance with rent. Even emergency provision could be unaffordable, with one participant evicted from the YMCA on the eve of his interview for non-payment of rent.

Contesting judicial reviews of the household benefit cap (*R (SG) v. Secretary of State for Work and Pensions* [2015]) and the 'bedroom tax' (*MA* [2016]), the Secretary of State has argued that individuals who could no longer afford their current housing because of social security cuts had several options. They could increase their income by seeking employment, a better paid job or more hours; reduce their housing costs by moving to a cheaper property; negotiate reduced rent with their landlord; or seek a Discretionary Housing Payment (DHP). There were examples of interviewees improving their financial circumstances through paid work, but others faced formidable barriers to employment. Downsizing, or seeking to downsize, was a more common solution, although smaller units were not always readily available. Gibb (2013) notes that the availability of smaller social housing can vary dramatically between parts of the UK. A small number of interviewees with social tenancies had been able, with assistance from advice workers, to arrange swaps with families in different local government districts who required more space, but in the process could lose relationships with advice providers and support workers in their former authority. Only one had been able to negotiate lower rent with her landlord, but at the cost of some of her rights as a tenant: under a "gentleman's agreement", she accepted responsibility for minor repairs, with the landlord in turn accepting the housing benefit payment without top-up. Discretionary Housing Payments were a potential source of relief, but applications were not always successful; an award might be made for a fixed period only or could be very low: one single male interviewee had a £60 per month shortfall in his housing benefit, but was awarded a DHP of only £1.40 per week.

Rent arrears were not the only reason for loss of housing. Various interviewees had seen tenancies ended or put at risk because the landlord had sold the property, defaulted on the mortgage or died. In one case this was exacerbated because the tenant was not given formal notice of eviction, and consequently had difficulty accessing support from the local authority. Even when the decision to leave the property was at face value the tenant's own, there were occasions when the interviewee felt the landlord's actions – such as refusal to carry out essential repairs – had left little choice. A female asylum seeker had experienced ill-treatment and possibly violence at the hands of the owner of a house in which she had previously lived, resulting in police intervention and ultimately street homelessness. An older EEA migrant had also had a difficult relationship with a previous landlord, including reported altercations in the street, although he had been able to find alternative accommodation before vacating the house, while a male UK national hinted at a violent dispute with a neighbour. In the latter two cases, it was not clear that any legal intervention had been sought, though it seems likely that some legal redress would be possible.



Some interviewees had housing, sometimes with apparent security of tenure, but suggested that it was ill-suited to their needs, or for human habitation at all. The former group included a number of disabled interviewees who argued their housing was unsuitable because of stairs, a bath rather than a shower or a location at the top of a hill. Overcrowding was an issue for at least three interviewees, with two examples of an adult and three children sharing a two-bedroom property and one of two adults and three children in a one-bedroom flat for part of the week. The group that considered their housing unfit for anyone to live in included a woman who had only had a defective central heating system repaired following intervention from environmental health.

“I’ve got a two-bedroomed flat, but I had to camp out in the living room for four months, because it’s the only place it was warm enough to sleep, because my bedroom, the window was broken there. I had no heat, no boiler, so I couldn’t put the heating on at all ... the environmental health ... got a boiler put in for me. [The landlord] hasn’t done anything that they’ve asked him. They’ve sanctioned him. They’ve sent notices out to him. They’ve taken him to the court and everything and ... he’s not bothered.”

Female, 30-39, UK national.

There were other examples of intervention from environmental health and the fire service, in one case resulting in termination of the tenancy because the landlord failed to comply with instructions and the premises were declared “unhabitable”. Poor heating and/or insulation was a recurring issue, often leading to further problems of condensation, damp and mould, although it is likely that in some cases heating problems were a result of poverty rather than defects with the property. An interviewee who had once owned his own home outright had then had to sell it because his son’s care needs meant maintenance was neglected and “it got to the point where the house was more or less falling down”. When this sell-and-rent-back arrangement collapsed due to arrears, the interviewee had to move into a rented property where “I had never been as cold in my life”, carrying out various improvements himself to make the house habitable.

## Conclusion

The causes of destitution emerging from the 2017 interview data are complex, interrelated and often circular. Nonetheless, while each individual’s pathway to destitution is unique, most follow a common template. The ultimate trigger of destitution tends to be an unambiguously legal issue concerning social security entitlement or debt, which leads to or combines with unaffordable rent to result in adequate housing, other essential needs or both being out of reach. Except for the few non-UK interviewees with no access to social assistance, a social security problem most often appears as the tipping point that sends the individual from ‘struggling’ to ‘destitute’, hence the focus on this area in Chapter 3. However, these triggers only come into play after the person has been affected by one of the underlying sources of vulnerability, which are less-consistently legal in nature: family problems; loss of employment or labour market exclusion; ill health or disability and (less often) experiences of crime.

The diversity of factors contributing to destitution means that even with the benefit of hindsight it can be difficult to identify key points at which advice seeking or some other form of legal intervention might have prevented destitution, or whether legal advice now might improve the interviewee’s situation. Nonetheless, there are examples of interviewees looking (more or less successfully) for solutions to their legal problems, even if not described in those terms, or electing not to do so. Chapter 4 highlights patterns of advice seeking, seeks to evaluate their effectiveness and highlights the challenges of meeting legal need in an age of austerity – for example, the impact of the removal of legal aid for housing advice when housing problems are central to experiences of destitution. Ultimately, consideration is given to the potential for the path away from destitution to run parallel with the path to justice.

### 3. Social security and destitution

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#### Summary

Social security related problems were common among our interviewees and a key contributor to their financial insecurity, in relation to inadequate levels of income that were impacted negatively by sanctions and/or delayed payments, and in relation to difficulties in accessing social security entitlements. Interviewees could struggle to identify what they were entitled to and so did not make claims for benefits that might have lifted them out of destitution. Poor knowledge of entitlement was exacerbated by problems engaging with the social security system. Many of these problems are attributable to system design: from complex application forms and online processes, to system failures in triggering consequential actions arising from a claim, to a lack of responsiveness within the system to claimant circumstances. While it would be preferable for these problems to be resolved at source, where this is not happening there should be external support for claimants to help them navigate the social security system. This applies also to decision-making and challenging decisions, where claimant trust is often low; an issue that is once again exacerbated by low levels of knowledge about how the decisions were made and how the system works.

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There is a need for the social security system to respond to failure demand, which requires a better understanding of where and why the failure points exist. External communications with claimants, better engagement to educate claimants on what entitlement is based on and how decisions are made, and support for those who wish to challenge decisions are points at which the system could be improved. Understanding take-up and why individuals do not challenge unsuccessful claims should also be addressed. Finally, where system failures are not rectified and are contributing to destitution, the 'polluter pays' principle should be applied to resource external support for claimants to overcome systemic barriers.

#### Introduction

As Chapters 1 and 2 highlight, social security problems were a common experience for interviewees, in relation to the parsimonious nature of benefit payments and the precariousness of managing an insecure and unpredictable income. What is examined further in this chapter is where the design and delivery of benefits exacerbates the problems of managing an often erratic income that does not meet a claimant's basic needs, and the challenges inherent in disputing benefit decisions. This chapter examines the 'claimant journey' within the social security system to understand where the system weaknesses are, recognising the role of systemic problems in contributing to destitution and the potential trigger points in the claimant journey where specialist or legal advice might assist.

## Social security and destitution

The 2016 report, *Destitution in the UK* identified the rising trend in a number of factors which appear to be associated with routes into destitution, including benefit sanctions – experienced by 30% of all of the individuals in the 2016 sample – and benefit delays – experienced by 40% of the sample. Benefit delays were the most frequently-reported problem and existed across the full range of income-replacement and disability benefits. While less-frequently reported, the impact of benefit sanctions (reported by 30% of all destitute service users in the 2015 destitution census survey) was ‘exceptionally abrupt’. Around half of those who Fitzpatrick et al (2016) spoke to who had received a benefit sanction linked its application to being unable to afford basic essentials.

The 2018 report finds that benefit sanctions appear to have reduced (from 27% to 19%), as have benefit delays (35% to 29%); this ties in with a broader national picture on sanctions (Webster, 2016; National Audit Office, 2016b). Nonetheless, the abrupt impact of sanctions is echoed in the 2018 destitution report, with particular concerns raised about the potential increase in conditionality and sanctions under Universal Credit (UC) (Fitzpatrick et al, 2018; Webster, 2017).

Sanctions and delays become more difficult to manage when benefit income is too low to enable claimants to protect against future income shocks. For a single person who is out-of-work, social security only provides for a third of income needs and barely scrapes over the JRF destitution threshold (JRF, 2017). The return of inflation for the first time since the advent of the benefits freeze, which freezes working-age benefits at 2015-16 levels for a period of four years, means that the real value of benefits has started to decline. Cuts in Child Tax Credit (CTC) and the equivalent element in UC, which means that a family where the oldest child was born after 2017 will no longer get the family element of CTC (amounting to £545 a year), has started to come into effect. In addition, the child element of UC or CTC (amounting to £2,780 a year) will not be granted to children born after April 2017 who have at least two siblings in respect of whom CTC is being paid (otherwise known as the ‘two-child rule’). The freeze in Local Housing Allowance (LHA) for four years commencing in 2016 has contributed to the increasing gap between people’s incomes and their rent. As Chapter 2 illustrates, the relationship between housing costs and destitution is clear, and reductions in benefit income (including through the ‘bedroom tax’) combined with the entirely discretionary nature of local housing assistance in the form of DHPs, cement this relationship further.

Under UC, further reductions come from the cuts to the work allowance, with tapers considerably less generous now than when UC was first implemented, undermining the central message of UC that work will always pay (Browne et al, 2016). For those who are self-employed, the complexity of the new UC regime combined with the reality of individual lives and small-scale enterprises means it is difficult to see how UC can offer a reliable, positive contribution to income (DWP and SSAC, 2018; Low Incomes Tax Reform Group [LITRG], 2017). From the beginning of April 2017, ESA claimants, who are in the ESA ‘work-related activity’ group have had their benefits reduced by £30 per week, bringing their weekly rate in line with Jobseeker’s Allowance claimants, despite being unable – due to sickness or disability – to improve their income through work (Baumberg, 2015, Garthwaite, 2016).

These changes represent not just an attempt, through austerity measures, to reduce public expenditure on social security benefits, or a policy objective to ensure that work is seen as preferable to benefits, but a forceful and often negative impact on the lives of ordinary people and their ability to survive. The statement by an interviewee with complex needs that “the government just don’t give you enough to live on” sums up how many participants felt (Patrick, 2017). There appears to be no government rhetoric or policy statement to support the idea that destitution is deliberately designed into the social security system, although Webster (2014) suggests that this is the case. Rather the rhetoric speaks of security, protection and support, and there is provision within the system to be responsive to the hardship that benefit claimants may face. What this indicates is a system that is flawed in its design and that unintentionally triggers destitution for individuals with complex, chaotic, or challenging lives. The discussion of the claimant journey, below, highlights where these design flaws arise, and where claimants may need to rely on external support to manage these flaws. The need for support across the full range of benefit entitlement becomes more critical the more vulnerable the circumstances of the claimant. External support from welfare advice agencies can steer a claimant through the system to manage the different challenges they face. In the face of such stark evidence of destitution among the claimant population, external assistance for individuals to avoid or escape destitution triggered by social security problems is vital.



## The claimant journey

### Recognising an entitlement to social security benefits

Securing access to social security benefits is an active process that requires the claimant to be aware or informed of their possible eligibility for benefits, and to then take the necessary actions to progress that claim. In 2015/2016 an estimated £12.4 billion of means-tested benefits (excluding tax credits) went unclaimed in England, Scotland and Wales (DWP, 2017c). The Department estimated that 39% of those entitled to Pension Credit did not claim the benefit, resulting in a loss of £2,000 per year for 1.4 million households; 23% of those entitled to housing benefit did not claim, a loss of £3,000 per year for 1.6 million households; 16% of those entitled to income-based ESA did not claim their entitlement, a loss of £5,000 per year for 0.5 million households; and 44% of people entitled to income-based JSA did not claim the benefit, a loss of £3,500 per year for 0.5 million households.

While there are many reasons why individuals may not claim benefits to which they are legally entitled, there was strong evidence in our study that destitute individuals were not aware of their potential eligibility for different social security benefits, or related discretionary or local support schemes. For some, this appeared to be due to a lack of awareness that particular needs could be supported: one interviewee with serious mental health problems had never heard of Personal Independence Payment (PIP), which provides financial support for individuals whose functional capacity is limited by physical, mental, intellectual or cognitive impairment. Whether she would have been successful in her claim is a secondary issue; a lack of awareness prevents any prospect of an award (Department for Communities [DfC], 2018). Other individuals were unaware of how particular entitlements could work, believing (for example) that it was not possible to claim UC while working, even though one of the most critical design features of UC is as an in-work benefit, or that being 'fit to work' meant you cannot claim PIP, despite PIP not being connected to an ability or inability to work. For one applicant, being told that he was ineligible for ESA did not translate into any awareness that he could apply for JSA, and he either did not receive or did not understand the advice that unsuccessful ESA claimants are meant to receive as a matter of routine.

The increasing trend towards localising the provision of what were previously centrally-distributed social security funds has meant local welfare assistance has become more critical in supporting the basic levels of social security entitlement (SSAC, 2015), although where access is via discretionary schemes any underlying legal entitlement is weak (Meers, 2015). Awareness of local welfare assistance among the interviewees appeared to be low. Some interviewees were aware of emergency assistance that could be provided by "the social" or local authority, and some had availed of it to access a discretionary cash payment or help with energy costs. The limitations for those who tried to access it, however, were also evident: assistance with energy costs was only available to those with a keypad meter, for example, and the level of discretionary assistance did not come close to the income gap that needed to be filled. It is likely that external welfare advice could assist claimants to access their potential entitlement from discretionary funds as well as statutory entitlements, particularly where knowledge of entitlement is low. This should be a consideration for improving the levels of benefit take-up.

### The application process

Making a claim for a social security benefit is often a complex process with fine lines dividing claims that are eligible and ineligible. Where self-assessment is required for a benefit, this is usually via a lengthy claim form, itself a potential barrier for those who see form-filling as "a mountain for me to climb" (McKeever, 2013). Given that the legislative criteria for entitlement are often complex and confusing, their translation into a self-assessment mechanism is difficult and may not be successful in capturing the information required to make a full assessment (Genn and Thomas, 2013). The problem is exacerbated by the fact that claimants are not made aware of the legislative criteria, or the different points against which their self-assessment will be scored, a concern raised by the SSAC, which recommended that claimants should be given the legislative descriptors and associated scores to enable them to make sense of their assessments (SSAC, 2016).

For UC applicants who must apply online, additional obstacles can arise. Some of our interviewees lacked digital literacy and would therefore be expected to struggle with UC digital requirements, including maintaining their claim, but more prevalent was a lack of internet access. Internet access at home was not a given; while facilities were often available at libraries and food banks, time online could be limited, while mental health and privacy concerns could in some cases lead to reluctance to complete applications there. One interviewee was ultimately able to apply using his smartphone, but had to abandon two initial attempts after losing reception.

For UC claimants in 'full service' areas, the claimant is required to 'manage' the claim online, which includes communications with the designated work coach, payment statements and the requirement to report job-seeking activity which is expected to be carried out through the online UC journal. Those who lack internet access are more likely to miss online instructions or work coach appointments, increasing the risk of sanctions and/or unsuccessful UC claims. Under UC 'full service', third parties acting as the claimant's proxy are systematically frustrated or blocked from intervening online on the claimant's behalf, setting claimants up to fail based not just on unrealistic assumptions of digital access but on a false understanding of claimants' lives as stable and secure and a failure to recognise the vital role of external advice.

For ESA and PIP, each step of the application process is designed to trigger the next step to be made, either by the claimant or the department, and so clarity on what the next steps are and systemic integrity in completing each step of the journey are critical to the efficient outcome of the claim process. This includes prompting the claimant to re-apply when their time-limited award is due to end. The system design is not always delivering this outcome: a lone parent interviewee was not prompted by DWP to reapply when her PIP award ended. Without the prompt by the system to make a fresh and timely claim, the new claim did not cover the intervening period between the award ending and the new claim being determined, causing a financial shortfall. Even where the system is attentive to instructing claimants to reconnect, however, concerns arise over the need for continuous engagement, particularly where individuals may be experiencing chaos or insecurity in other domains of life, as we know to be the case for individuals experiencing destitution (see Chapter 5). Under these circumstances, the ability of the system to be responsive to a claimant's changing circumstances, some of which may inhibit or prevent system engagement, becomes more critical. Where the system is unable to be responsive, the default position will always be to put the responsibility on the individual claimant to meet the system demands, creating greater potential for their benefit payments to be stopped, sanctioned or delayed if the claimant cannot discharge these responsibilities.

Further difficulties arise when claimants have to move between benefits, particularly where their eligibility is marginal for one benefit, pushing them forward and back from it. A single male interviewee moved repeatedly from ESA to JSA, typically experiencing "a couple of weeks living on nothing". The instability was in part due to his determination to return to paid work – "I need a job, I want a job. I don't want to sit around in the house going nuts all the time!" – which was undermined by his health then deteriorating, and requiring a return to ESA. The ability of the system to respond to these fluctuating circumstances proved to be weak, and had negative repercussions for the claimant's financial stability. The interviewee felt "you can get stability on benefits as long as you are on the same benefit for at least three monthly payments", but described being refused ESA and then having to claim JSA as "like trying to organise things on a sinking ship".

When this financial insecurity is layered on top of existing hardship that results from benefit levels not meeting basic income needs, the capacity of individuals to remedy the problem is compromised further. Gandy et al (2016) highlight that financial difficulties can limit the 'bandwidth' or mental capacity that individuals have to resolve problems. Where decision-making is impaired it becomes more difficult to resolve problems, which in turn depletes the resources of human capital that individuals need to manage their choices, creating a negative cycle. This may be a critical intervention point, where individuals might be expected to seek help with their problems, but as Chapter 4 will demonstrate, advice-seeking behaviour for those with complex or multiple problems – as our destitute interviewees exhibited – does not always follow this 'logical' pathway, and the ability to do so is hampered further by difficulties in accessing advice. As always, prevention is preferable to cure and the trigger point here for assistance lies within the benefit system rather than in the external advice environment.

The evidence from those in destitution indicates that the responsiveness and integrity of the system, and the reliability of departmental advice, are not sufficiently robust to avoid triggering a need for external assistance, or generating financial difficulties for applicants entitled to benefits. In seeking to progress an application for Child Benefit, a lone parent reported a delay of 21 days before receiving the application form in the post. Other interviewees described difficulties associated with poor advice from JCP staff. A different lone parent was directed to apply for Jobseeker's Allowance, but later realised she should have applied for Income Support because of the age of her children. Another interviewee's application for JSA was held up because he had not been advised to fill in a particular form, leading to a delay of several weeks for his first payment. 'Jennifer', profiled in Chapter 5, thought she had applied for Child Tax Credit by telephone, only to be told when she made a subsequent enquiry about the progress of her application this was not possible:

“[S]he [the HMRC adviser] said, ‘Well, we’re going to have to send you the forms out to fill in.’ I said, ‘No, the man did it all with me on the phone.’ She said, ‘They’re not allowed to do it on the phone. You have to have the form.’ Well, I was hysterical, in tears. ‘I’ve got three children to feed.’ She said, ‘...I understand that, but that man should never have done what he’s done. You have to fill these forms out.’”

Female, age not stated, UK national.

Other claimants faced difficulties in proving eligibility for benefits. For one of the lone parents in the study, the difficulty in claiming Child Benefit arose because her family circumstances were too ‘complicated’ for the system to manage, namely that the children split their time between their two parents. The biggest barriers existed for migrants who were unable to demonstrate entitlement based on residence or nationality. A non-EEA citizen, with no entitlement to benefits, found that this extended to being unable to access any assistance from Jobcentre Plus to find work: “they’re doing it for their own citizens, for their public, managing public funds”. Not all migrants who attempted to make a claim for social security understood why they had been denied entitlement. One EEA citizen thought the inability to claim Pension Credit or JSA might be “to do with Brexit”.

For others, the very public drive for integrity in the system created negative consequences, where integrity was seen to mean blocking fraudulent applications. A would-be claimant of industrial injuries benefit had made an error on a previous application and was reluctant to reapply because “it’ll just look like I’m being fraudulent”. While fraud is a problem for a publicly-funded system, underpayment is also problematic and impacts negatively on those who are underpaid. In 2016/2017 approximately £1.7 billion in social security benefits was underpaid, amounting to 1% of total benefit expenditure (DWP, 2017b). Of this, £190 million is estimated to have been underpaid in PIP, equivalent to 3.6% of the total expenditure on PIP and, overall, official errors in decisions awarding benefit resulted in £27 million being underpaid.

Where claimants are unable to manage the initial application process, particularly where financial need is acute and the system is not working as it should, the need for support and assistance would seem critical to ensure they can access the basic payments they are entitled to. This will include challenging unsuccessful decisions. It will also require public funding of support structures, including benefits advice which has been removed from legal aid in England and Wales since 2012.

## Assessment and decision-making

Social security benefits relating to sickness, incapacity or disability require a medical assessment by the Department, to provide an objective measurement of a claimant’s incapacity or disability. The assessment of PIP and ESA in particular have caused some controversy, both in relation to the quality of outsourced assessment processes and the consequent lack of trust in the system (DWP/Gray, 2017; Litchfield, 2015), and in relation to the disjuncture or inconsistency between a claimant’s diagnosis or prognosis and the assessment of their functional capacities (McKeever, 2014; Grover and Piggott, 2010). The negative impact on claimant trust has been evidenced through high levels of claimant grievances and public suspicions of fraud, fed by pejorative media discourse (Work and Pensions Committee, 2011; Garthwaite, 2011).

The experiences of our interviewees corroborate this negative experience. They described the assessment processes for PIP and ESA as stressful and upsetting, suspecting that the purpose of assessment is to find reasons not to award benefit because, as the interviewee with the unsuccessful application for industrial injuries benefit stated, “you’re automatically assumed to be fraudulent”. For those going through reassessments, the process was described as a “battle” which seemed pointless and often out-of-step with the professional opinions of their medical team. A general lack of claimant knowledge about the benefits for which they might be eligible inevitably leads to claimants being confused when the assessment does not reflect their medical or functional problems. In this study applicants described their distress at being told they are ‘fit to work’ when their GP and their own experiences say otherwise. There was further frustration at the inconsistencies within the system, either due to an inability to respond flexibly to the fluctuating nature of a diagnosis – such as an interviewee who continued to be required to attend for reassessment as her diagnosis kept changing – to bafflement at the level of inconsistency impacting on eligibility:

“When I appealed against my ESA they gave me no points; even though a person before passed me all of it. I got the sick and then got refused. I then went to PIP and they gave me four points. I don’t know how they can figure it out: one doctor at first gives it me and then somebody takes it off me; another doctor who gives me none and then another doctor gave me four.”

Male, 40-49, UK national.

Once again, this lack of understanding identifies a need for support, ideally within the system that can educate and inform claimants and enable them to engage, rather than isolating and confusing them. Where the internal system is not supporting claimants, then external support and independent advice again becomes critical.

### Disputing benefit decisions

Disputing a decision requires claimants to recognise either a flaw in departmental decision-making or an outcome that does not accord with their expectations. Where claimants know very little about the benefit they are applying for, or how the decisions are made, it is difficult to know how they understand the right to dispute the decision. The lack of awareness of the precise outcome of claims was common among the study sample. Interviewees might be broadly aware which benefit they were claiming, but lack knowledge of important details such as which rate of PIP was being received, which ESA group they had been placed in or when payment would commence (or be reinstated following appeal).

The decision-making process regarding lodging an appeal was not always clear and interviewees were vague about their rights to challenge decisions. For example, the interviewee whose bewilderment at differing assessment outcomes is quoted above had initiated an appeal against the refusal of his application for Employment and Support Allowance, but not the refusal of Personal Independence Payment, even though he had received more points in his PIP assessment. While refusal of an application for a benefit did not necessarily put interviewees off re-applying in the future, an unsuccessful appeal could be a significant deterrent to future appeals. A lone parent had considered appealing the recovery of an overpayment but decided not to when told of a “big reason” that no appeal could be made for 90 days, while a single male thought appeals were a “waste of time” (but had an ESA appeal pending nonetheless). Experiences of challenging decisions, both through the internal mandatory reconsideration process and independent appeals produced a mixture of responses. Interviewees who had successfully appealed and those with little prior experience of the social security system had more positive perceptions of the process. Failure at mandatory reconsideration stage caused some (but by no means all) interviewees to lose heart and not pursue an appeal. The tribunal experience itself ranged from very negative to success after a “five minute” hearing.

Research on tribunals has identified that the appellant’s lack of understanding of the original decision remains a significant factor in making an appeal (McKeever, 2013). This represents a demand-failure in the social security system that transfers the problem to the administrative justice system, where individuals without meritorious cases appeal because they do not understand the basis for their unsuccessful claim or subsequent appeal. It is also the case, however, that success rates at appeal remain stubbornly high. O’Brien (2017) reports that between 2013 and 2016, 483,000 mandatory reconsiderations were conducted, with 10% of those decisions overturned but 40% of decisions appealed successfully. More recent figures show that, from April to June 2017, the overturn rate was 68% for ESA appeals, 65% for PIP appeals and 55% for DLA appeals (Ministry of Justice, 2017b). Tribunal overturn rates can be an indication of poor decision-making but they are an imperfect measure because not everyone will appeal, and because the evidence may be very finely balanced. What is also clear from research with tribunal users, however, is the need for claimant support to progress disputes, and the high rate of success in oral tribunal hearings compared with those appeals decided only on the papers (McKeever, 2014). While it is good administrative justice to have recourse to independent appeal, it is not good administration to have to have recourse so frequently and successfully, particularly where support is not available to help access appeal rights. This again points to a critical need for specialist or legal support to help claimants access their entitlements, including in situations where the appeal represents a failure in the department’s decision-making process.

### Compliance and sanctions

As the 2016 report *Destitution in the UK* notes, social security sanctions were experienced by 30% of those who were destitute. For the 2018 report, the number of respondents who were sanctioned appeared to have declined but those subject to sanctions still suffered a major income shock as a result, requiring them to seek help for basic necessities from family members and charities, including food banks (Fitzpatrick et al, 2018). Between 1 August 2015 and 30 June 2017 sanction rates fell for both JSA and ESA claimants - to 0.4% and 0.3% respectively – but for UC (live service) the figure has doubled from 3.4% to 6.9% (DWP, 2017a).

The need for claimants to comply with the conditions of benefit is not in dispute. What has been disputed, however, is the efficacy and ethicality of sanctions designed to underpin this conditionality, particularly where

claimant awareness of sanctions remains unclear (Oakley, 2014; National Audit Office [NAO], 2016; Wright and Stewart, 2016). Claimants in our sample did not understand why or when a sanction had resulted, and did not receive timely or reliable notifications of their obligations (as highlighted in Chapter 2).

The interviewees identified sanctions as an obstacle to jobseeking, running contrary to the core policy intent of making out-of-work benefits conditional on jobseeking and using sanctions to bolster this objective. 'Rebecca', whose story is told in Chapter 5, described a significant and worrying deterioration in her mental health to the point where it seemed likely she would have to be moved to a reduced-conditionality UC group:

"[N]ot wanting to be here, just breaking down, not going out, not wanting to speak to anyone, missing appointments, not on purpose, just because I can't face going out. My health, I've started to get alopecia on my head, losing hair because I'm so stressed out, I constantly get migraines, sometimes I'm really ill, I can't get out of bed, I'm just constantly sick."

Female, 20-29, UK national.

More generally, interviewees described the stress required to engage continuously with Jobcentre staff under the threat of sanctions. For some this was a very negative experience:

"[T]he Jobcentre has over the last few years not been supportive; it's been incredibly hostile and very difficult to deal with. Each time I've gone, I've had to give the history of my life over, like, the last five years so that they realise that I'm not just not trying to get a job ... I think it could actually make people take their own lives."

Male, 50-59, UK national.

For others, however, the experience was more positive and humane, demonstrating how the system could work better, including under circumstances where sanctions were applied:

"I worked up quite a good relationship with a guy at my local Jobcentre at the time who actually was one of the key people in helping me. Even when I was sanctioned, because I was diabetic, he told me about the hardship payments and stuff like that, so I can still get some sort of money to eat and get my medication and stuff like that. He was one of the key employees at the Jobcentre that actually ... told me what was available to me ... went out of his way to help me to make sure I got the help that I needed ... a lot of other people were dismissive and left me to rot in the situation."

Male, 30-39, UK national.

The knowledge to support claimants is within the social security system, and when this knowledge is not shared or applied as it should be claimants are put at risk of destitution. External knowledge of the system is one remedy, but the fact continues to arise that it is the system that is creating the problem which then requires either that the system is fixed to prevent or mitigate the problem, or individuals are supported to access an external, independent remedy. Support to challenge sanctions decisions would arguably be an effective resource, given that 81% of sanctions appeals (from August 2015 to October 2017) were successful (DWP, 2018b), yet only 0.3% of UC sanctions to date have reached a tribunal (Webster, 2018).

## Conclusion

The process of claiming social security benefits and maintaining entitlement is complex and reliant on robust systems as well as individuals resilient enough to be able to respond to system demands, often without support from independent advisers. At each of these demand points, therefore, claimants are vulnerable to system failure, including where the triggers are predicated on claimant engagement. These contact points represent potential intervention points, where advice and support could be delivered but the lack of systemic and/or independent support to help claimants manage and maintain this engagement can lead to claims being refused, delayed, terminated or sanctioned in instances where claimant support may have avoided this outcome. This then acts as a trigger for destitution. There is a need, therefore, to identify actions that could be taken both internally and external to the social security system that would help to prevent or mitigate destitution.

A range of action points arise from our analysis, covering in-system changes as well as developing and maintaining external support structures. The first action needs to be for the DWP (and the Department for Communities in Northern Ireland) to develop a better understanding of where system failures exist and to address



these as a priority. One area in particular that has been under-developed is in understanding why individuals do not take up benefits to which they may be entitled and to provide robust solutions to the obstacles that prevent take-up. The DWP's findings on take-up for PIP, that lie behind the figures on unclaimed benefits, relate entirely to the reluctance of individuals to report changes in their conditions (DWP, 2017b). Given that reporting will prompt potential uncertainty, delay and inaccuracy in payments, the rationale for failure to report seems entirely logical, but it is also detrimental and needs to be addressed effectively.

The system itself needs to be more flexible and coherent in both communicating with claimants and responding to their changing circumstances. Information provided to claimants needs to be clear, accessible, understandable and informative – not simply about the duties and responsibilities that claimants hold, but about their entitlements, about how benefit decisions are made, about the criteria against which claims are adjudicated, about the processes to challenge decisions, about how claimants can expect to be supported by the system at a time when they are extremely vulnerable, and about how claimants can hold the system to account. In practical terms this means improving claim forms, both to make them more user-friendly but also to collect the information that is required to determine entitlements accurately and transparently, to reduce the high frequency of success rates at appeal. It means giving greater transparency to decision-making, by implementing many of the recommendations that have been made to 'humanise' the decision-making process, including providing assessment reports with decisions and identifying why claims have been unsuccessful. It means piloting ways to help claimants avoid sanctions, or even to manage sanctions by giving them advance notice of the sanction period, clear information on why the sanction has been determined, and time and support to dispute the sanction decision, including training staff to understand the circumstances that can lead to sanctions and to be responsive to these. It means building a system of departmental prompts for individuals to receive benefit checks to ensure they are getting their full entitlement, including creating reliable prompts to re-apply for an existing award that is due to end, prompts to invite claims for related benefits, either in relation to the inevitable overlap between disability and sickness benefits or where a claim has been unsuccessful but a claim for a different benefit could be made.

Where claims are deemed to be unsuccessful, the Department should also invest in understanding why some claimants dispute those decisions and some do not. This is an issue that is significantly under-researched, in part because it is difficult for independent researchers to identify individuals who have been unsuccessful in making claims. The Department, however, would be able to identify such individuals and engage them in research to understand their reasons for making a claim; their knowledge of the benefit they applied for and understanding of why their claim was unsuccessful; their rationale for not challenging the decision and any support needs that would help claimants make successful claims. This could simultaneously inform an understanding of benefit take-up, identifying additional supports for making benefit claims, barriers to progressing claims and general understanding of the purpose of individual benefits.

Action is also needed to get system recognition that many of the problems created are not the responsibility of claimants to put right, but the system itself. Where the social security system sees the 'stick' of claimant conditionality as being effective in promoting claimant responsibility, the lesson may also apply in reverse, so that where the system is at fault, there is a 'stick' applied to the system for that failure. This principle of 'polluter pays' is not an unusual proposition in relation to the funding of advice and support services that assist individuals seeking remedies for system failures. There are different options that can apply this principle, from a financial charge that can be levied by legal or advice services, to remedy maladministration, to individual compensation payments in cash or in kind for system failures, particularly those that can act as triggers for destitution. This report highlights some of the system failures in social security, but others will exist and they need to be identified and then rectified by the government.

Social security entitlements should provide protection against destitution. Access to these rights can often be delayed or frustrated by barriers within the social security system, and these systemic problems need to be resolved. Many of the problems are currently dealt with through the administrative justice system that facilitates challenges to the decisions that deny entitlement. Access to this system therefore also requires investment, through the provision of external support for claimants. The potential for external support to provide a path to justice out of destitution is explored in Chapter 4.

## 4. Legal support for problems of destitution

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### Summary

In common with the research literature on how people deal with their justiciable problems, most of the individuals in our study sample were unaware that they had a justiciable issue, lacked the legal capability to deal with the issue and did not follow an objectively 'logical' pathway to early legal advice to mitigate or resolve their justiciable problems. For many interviewees, not knowing how to get help meant they relied on self-resolution, which might address the consequences rather than the causes of their problems. This presented particular difficulties where their legal problems occurred in clusters, with a need to address multiple causes, as the case studies in Chapter 5 will highlight. What this chapter has confirmed, however, is that an individual's vulnerability to a cycle of legal problems mirrors the vulnerability to the cluster of destitution problems that our interviewees faced: debt, ill health, labour market exclusion, and housing, with the additional issues of relationship problems and criminal activity identified among the destitute interviewees as contributing to their vulnerabilities.

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Difficulties in dealing with these problem clusters were apparent, either where advisers were not looking beyond the initial problem because of the limitation of the advice they could provide or because of an inability of individuals to recognise and share information that would be relevant in identifying the range of legal difficulties. This problem was exacerbated by the pathways to advice which were stumbled on by luck or chance, or via an often-convoluted process of referral. The advice sources on each pathway could vary in terms of quality and engagement and ranged from professional legal services, to administrative or voluntary sector agencies, to more informal support structures. There was some evidence of interviewees benefiting from legal aid but equally a worrying perception among others that legal aid was either non-existent or beyond reach.

Interviewees sought advice on a range of issues reflecting the multiplicity of problems they faced, not all of which were legal, reinforcing a need to consider the co-location of advice and support services as a way to identify and resolve the underlying causes as well as consequences of clustered problems. Overall, there was little evidence of individuals being able to adopt strategic rather than reactive approaches to their problems, often due to the inability to balance survival strategies against long-term gain. The implication for advice providers is that they need to be resourced to deal with crisis situations that impact on a multitude of different issues. The advice landscape, most notably in England and Wales after the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012, has become much more impoverished, damaging the advice ecosystem that provides the complex support that is needed. The problems that our destitute interviewees exhibited were exacerbated by the individual barriers they faced in seeking advice, including geographical and economic isolation as well as digital exclusion, which multiply further when the necessary advice sources are not equipped to assist in overcoming an individual's emotional fatigue and lack of legal capability.



There is a danger in drawing a full circle here, whereby any awareness the individual may have gained in appreciating that they have a justiciable problem is off-set by the inability to secure advice and support to deal with that problem and the underlying causes, compounded by the extraordinary difficulties the individual faces in managing their destitute circumstances. Three main recommendations emerge from the data to deal with this. First, resource advice services to identify problem clusters, rather than only being able to focus on the problems their service can assist with. Second, provide partial reinstatement of legal aid funding to support preventative and remedial action that will help avoid destitution, primarily in the areas of housing, debt and social security, particularly appeals against sanctions. Third, co-locate legal and health services and enable crisis and support workers to identify justiciable issues that clients need help to deal with.

## Introduction

Individuals in destitution experience a number of different problems, many of which could be justiciable; that is to say they may have legal solutions. The extent to which the individuals in our sample recognised or pursued potential legal solutions varies considerably, ranging from those who had little awareness that their problems could be resolved at all, to those who had engaged with multiple advice and support services to mitigate or resolve their difficulties. This chapter examines the different paths to justice that these individuals took, looking at their advice-seeking behaviour and the obstacles that exist on the different pathways, while considering the ability of the legal and advice sectors to respond to these behaviours.

There was no attempt to offer a definition of ‘legal advice’ or even ‘advice’ to the interviewees within our study. Instead, the interviewees responded to questions about advice sources and what help they had sought in relation to the issues contributing to their destitution. Consequently, the data collected provides an insight into the range of information, support and advice types that interviewees accessed or recognised, from the most basic – informal networks raising awareness of the existence of social security support – to the more complex – accessing professional legal representation to challenge decisions in court proceedings. For the purposes of our analysis of the data, we have treated the concept of ‘advice’ as any information, support, or general/expert/professional advice that can assist an individual with the pursuit of a justiciable issue. What this has allowed us to do is to draw a more holistic impression of where individuals go to get help with justiciable issues, and to understand better their particular paths to justice.

## The advice landscape

The scope of what could be funded through legal aid in England and Wales was reduced dramatically under the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012. LASPO has effectively removed from the scope of legal aid most cases involving housing, welfare, debt, employment, and immigration – core justiciable issues which are noted in this report and by Fitzpatrick et al (2016; 2018) as implicated in individual circumstances of destitution. While legal aid provision in Scotland and Northern Ireland is different, neither jurisdiction has been immune to the influence of the public austerity agenda, so while the reductions in scope for legal aid have not been as severe as under LASPO, there have been reductions to areas of assistance and a narrowing of eligibility criteria, as well as rising thresholds for financial contributions by individuals, alongside the removal of funding contracts for specialised areas of work. These cuts, coupled with the cuts to social security benefits implemented via the Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016 (and the equivalent legislation for Northern Ireland) have become dangerously entwined, arguably exacerbating the routes into destitution and limiting the routes out of destitution, leaving many individuals without the support they need (Organ and Sigafoos, 2017; Cornford et al, 2016).

It is important to acknowledge that public resources are not finite and that the introduction of LASPO was a response to efforts to limit public expenditure and ensure that the legal aid system can remain a sustainable pillar which provides sufficient access to justice. The 2012 legislation was enacted in the context of a wider government effort to cut the financial deficit in public expenditure and to deliver ‘better overall value for money for the taxpayer’ (Ministry of Justice, 2017a). There has been a move away from funding face-to-face provision and an expansion of telephone advice which was determined to be more cost-effective for the Ministry of Justice to deliver. However, this shift in provision has not been matched with the development of a public awareness campaign and therefore the concerns about poor legal knowledge, evidenced in this research, are intensified by the lack of information on the changing advice landscape. There is also a need for a public campaign to combat the widespread impression that legal aid is almost non-existent, and that legal advice is beyond reach.

The evidence that the UK government failed to anticipate the knock-on implications of the reforms under LASPO is compelling (Flynn and Hodgson, 2017). Ministry of Justice (2015) research shows that the number of not-for-profit legal advice centres in England and Wales (which includes Citizens Advice, law centres and legal advice practices) has fallen from 3,226 in 2005 to 1,462 by 2015. In addition, more than half of the 700 who responded to the Ministry of Justice consultation reported that they had client groups who they were unable to help due to lack of resources, expertise, or because they fell outside of their organisation's remit (Bach Commission, 2016). The Law Centre Network (2014) has stated that the unprecedented change in the political, economic and social context of civil legal advice provision, coupled with the rising demand for advice and representation and the significant reduction in former long-term income streams have caused an unstable environment that has impacted on the advice partnerships of the law centre model. As the Low Commission (2015) has observed, frontline agencies are increasingly 'running out of road'.

A consequence of reductions in capacity and existence is that many problems can no longer be prevented by early intervention, resulting in the escalation of cases and potentially the development of additional justiciable problems. The other impact is to shift costs to other public services (House of Commons Justice Committee, 2015). The Low Commission concluded that:

"If individuals are only able to access support on crisis issues, and advisers are not funded to address the clusters of associated problems or the fundamental cause of the problem (such as unemployment, not receiving the correct benefit, or resolving underlying financial problems), then the individual will keep returning to crisis point as the problem will only be temporarily masked not solved."

Low Commission, 2014.

While the advice landscape is so fragmented, a response which does not involve the reinstatement of at least some legal aid funding is more likely to be ad hoc, unstable and vulnerable to changing political agendas.

The evidence from our interviewees highlighted a range of access issues, including geographical restrictions exacerbated by a lack of income to afford transport costs, as well as limitations on the services that they accessed, leaving individuals at the end of a pathway with no idea where they could go next. One interviewee had made the very logical step of contacting Shelter about "the state of the flat" but the only assistance Shelter could provide was to suggest going to Citizens Advice to see if they could advocate on his behalf. For another, part of the problem in getting advice was that he had initially found Citizens Advice "too busy" to help him, and he appeared to be putting off advice seeking because he perceived there would be a cost. A rural interviewee's problems were both geographical – the bus fare was a barrier to visiting advice providers – and related to the circumstances with which a particular service could assist – he had received help from an advice worker with a specific focus on energy debts, but left other debts untouched. The vulnerability to what legal support is available (or not available) was a strong finding within the study sample.

## Advice-seeking behaviour

There is a recognisable pattern among the interviewees of advice-seeking behaviour, which shows how individuals can lack awareness that they have a justiciable problem and consequently do not adopt a strategic approach to seeking legal advice. When individuals do access advice services it is in an ad hoc way, sometimes through the luck of getting pointed in the right direction, and sometimes via a convoluted pathway that takes them through different types of advice provision, but with each additional step on the pathway to advice they become more fatigued. What is also important to consider, therefore, is whether – having found a pathway to advice – there are particular obstacles blocking progress on their path to justice, beyond the difficulties in the legal advice landscape across the UK, where service provision is diminishing and unstable.

### Awareness

There is a general need to be aware of what legal entitlements and rights exist in order to know whether access to those rights is being denied or whether advice would be beneficial. Knowledge is a key element of legal capability, defined as the extent to which an individual possesses 'knowledge, skills and attitudes to deal effectively with a law related problem' (Collard et al, 2011). Those who lack legal capability may more often fail to act to protect their rights, or prevent a problem escalating in severity, all of which may diminish the likelihood of achieving good resolution outcomes (Kim, 1999; Meager, 2002; Pleasence et al, 2017). There was certainly evidence in our study sample of individuals who failed to appreciate the legal dimensions of their problem in a

way that hinted at a lack of legal capability. One interviewee, when asked if they had referred to legal advice resources to address their housing and debt problems, responded with a degree of confusion as to the relevance of legal advice, by asking the interviewer, “What would I be looking for legal advice for myself at the moment?”. This exchange, and others like it within the sample, point to the relevance of ‘problem framing’ and the relationship between problem characterisation and problem resolution (Pleasence, Balmer and Reimers, 2010). Where individuals do not see their problems as ‘legal’ they will be unlikely to look to legal sources for legal solutions, even where these may be critical to problem resolution.

Legal capability does not just refer to an individual’s capacity to identify a legal issue with a possible legal solution; it also implies that the individual is able and ready to act to resolve the problem. This is an important consideration for policy development on improving access to advice services. For understandable reasons, there has been an emphasis on early intervention strategies, premised on the view that this can avoid justiciable problems escalating (Low Commission, 2015, p. viii). While this strategy can be extremely effective for some, it is important to recognise that many people, particularly those in disadvantaged groups, do not seek out assistance for their legal (or non-legal) problems in a timely way. Forell (2015) identifies that for individuals in vulnerable circumstances, ‘early’ intervention is often at crisis point, but that this is the earliest point at which individuals are able to engage. It was not always clear what prompted the 2018 interviewees to seek advice, with some reporting a long history of involvement with advice services. In some cases, though, a fairly clear trigger point – usually a crisis point – could be identified:

Female: My uncle, he actually works for Citizens Advice in Sheffield, he told me about the hardship payment and he prompted me to actually get an appointment with Citizens Advice, so I rang. I got this hardship payment. I got that on the same day that I would have missed my first credit payment, so technically I didn’t really go without, it was just the stress of everything ...

Interviewer: So it’s just really the fact that you managed to go and get the advice at the right time it sounded like?

Female: Yes, it was. It was such at the right time.

Female, 30-39, UK national.

Fitzpatrick et al (2016) found that “the group which appears most at risk of destitution in the contemporary UK is ‘younger single men’. This is also a group which is recognised as lacking the legal capability and services needed to protect their legal rights (Kenrick, 2009). Part of the difficulty is not just identifying a problem as justiciable, but in being aware of advice services that can assist in resolving the problem. In our study sample, lack of knowledge of the existence of services or what they could assist with was a recurring theme. Non-UK citizens sometimes perceived that they might not be eligible for support from advice services, while UK citizens’ awareness of advice services could also be limited: one interviewee had heard of many advice providers but was “not exactly sure what any of them do”. These views reflect the empirical findings of the Civil and Social Justice Panel Surveys in which respondents demonstrated varying levels of knowledge of advice providers (2010; 2012). An advice landscape that has a diminishing number of service providers will inevitably exacerbate these problems as previously-familiar services disappear.

## Going it alone

It appeared that most of our interviewees had received some form of advice, support or information at some point but often characterised this as going it alone. Despite this, it is still possible to identify potential intervention points to support those in or at risk of destitution. One narrative of self-sufficiency, for example, was built on the interviewee having taken the initiative to contact an advice service rather than having a lawyer act for him, demonstrating the value of having an advice service to access. Another man said he had never sought advice, although it seems apparent that he was in contact with social services due to health problems; support which is likely to have been limited to health-related issues rather than any underlying legal problems, but might feasibly have included general information on benefit entitlement and application processes. A third did not seem to have received independent legal advice, but had been able to resolve a housing issue by involving the local government environmental health team. Professionals working with individuals in vulnerable circumstances are likely to have opportunities to identify justiciable issues, but may need support themselves to do so and to refer clients to appropriate services. This could be a critical intervention point for individuals on a pathway to destitution, and therefore represents an opportunity to co-locate advice services, supporting an early-intervention model.

Going it alone could be expensive and time-consuming. The mother of a three-month-old baby said an issue with her maternity grant had been resolved by “ringing and ringing and ringing the Jobcentre”. Another woman’s life consisted of “phone calls and emails left, right and centre”, while ‘Rebecca’, profiled in Chapter 5, had seen her telephone cut off, in part due to the cost of “ring[ing] the Jobcentre and all them 0345 numbers”. Self-help could also be unproductive – one interviewee admitted that at some point “the anxiety kicks in and then I scream obscenit[ies] down the phone at some poor frontline member of staff and hang up on them”. However, another believed he had developed “a bit more legal savvy” through experience and would be better placed to deal with any future benefit-related problems. Whether this learning experience would assist with future problem solving seems unlikely for some:

Interviewer: What sort of problems would you think, oh right I’d better go and see somebody about that?

Female: If I was basically getting threatened with bills or going to court, threatening us with court and getting red letters and stuff like that. If I couldn’t sort the situation myself I would seek advice ...

Interviewer: If it happens again, your benefits get delayed or you get sanctioned, or what have you?

Female: Well, there’s nothing really, I could do differently apart from go to them and try to sort it out then go to the Citizens Advice and get another food voucher and go to the food bank again.

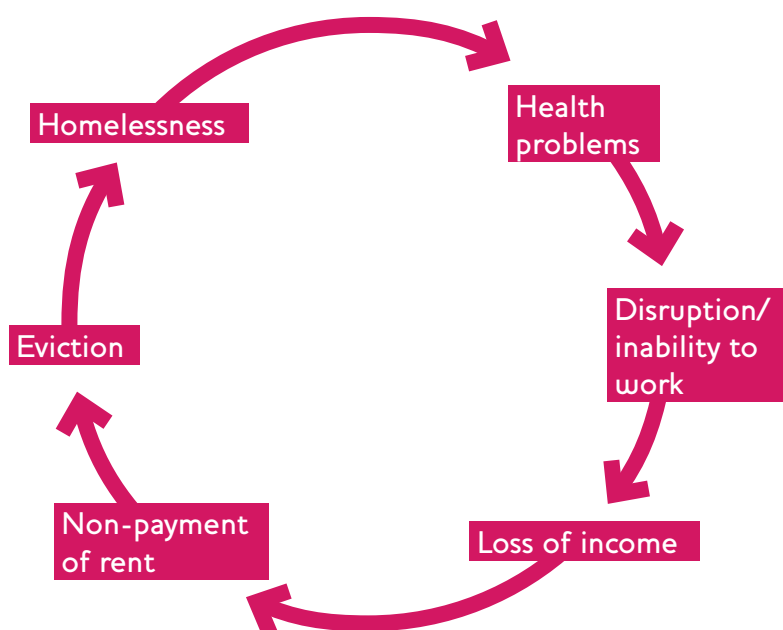
Female, 30-39, UK national.

The potential intervention point, as identified by this interviewee, was the consequence rather than the cause: where benefit delays or sanctions meant there was no income, the learning was focused on the downstream effects of social security problems, namely the inability to pay bills, rather than on the social security issues that might need to be resolved. This example illustrates Forell's analysis in identifying intervention at crisis point – addressing the consequences of lack of money by seeking food aid, rather than in the 'logical' earlier stages of preventing the problem escalating, by trying to tackle the social security problems that led to the lack of money. In reality, dealing with consequences may be a more rational choice, where an individual feels powerless in the face of bureaucratic decision-making and the cause of the problem seems too difficult to overcome. This rational reaction to a perceived reality conflicts with the statistical reality of successful appeals, however, so that what seems a rational choice based on anticipated futility of action may not be an accurate view, underlining the need for independent advice and support to assist in dealing with cause as well as consequence. If the evidence is that (potentially) destitute individuals are going it alone or not going to where the advice sources are currently located, then the solution would seem to be to locate advice services where the individuals *are* going. The investment into co-locating services would deal not just with consequence but with causes of the problems that trigger destitution, underlining the value of legal advice in tackling destitution and countering the public perception that challenging decisions is futile.

## Clusters

Intervention, at whatever point, will also rely on the identification of all the related justiciable issues to be most effective, given that legal problems beget legal problems. Tobin Tyler et al (2011) have identified the cycle of vulnerability to legal problems (Figure 1), highlighting issues which correspond to the triggers for, or characteristics of, destitution identified in our study sample:

**Figure 1: A vicious cycle of vulnerability to legal problems**  
(Adapted by Pleasence et al, 2015, from Tobin Tyler et al, 2011 p. 236)



Importantly, legal problems do not merely cluster with other legal problems, but have a clear interaction with physical and mental ill-health. This is particularly true of money and debt problems (Balmer et al, 2006; Bond et al, 2018). It also brings into sharp focus the identification by Fitzpatrick et al (2016) of 'serious health issues' as a strong theme for the 'UK-other' group, and as a predominant issue for the 'UK-complex needs' group, as contributing to their relative routes into destitution. The Low Commission (2015) has recognised the complex policy dynamics around public health, mental health and preventative services; however, the case remains that co-location of legal and health services could provide an effective intervention for an individual who is on a pathway towards extreme poverty and destitution, in reducing health barriers and extending access to legal advice services (Harding et al, 2002; Greasley and Small, 2005; Hansen and Lawton, 2008; Weintraub et al, 2010; Noone and Digney, 2010; Smith et al, 2013).

In the current study sample, GPs and health care workers often provided the pathway to advice for interviewees:

"I didn't even know, until the doctor told me, that it was something that you could apply for. I didn't have a clue. He advised us to go to Citizen's Advice ... It's something I didn't even know about a year ago. I didn't even know what PIP was."

Male, 50-59, UK national.

Various interviewees first made contact with an advice provider when it became necessary to obtain a food bank referral, and did not necessarily seek any assistance other than the referral, following suspension or termination of a benefit payment, when seeking a hardship payment or when facing imminent homelessness. This approach is something that is also a product of policy which defines statutory duties in very limited ways, and enables the creation of artificial boundaries of responsibility that do little to facilitate early intervention or resolution strategies. For example, 'Rebecca's' local authority had told her it could not provide assistance until the day she was actually evicted from her current home, illustrating the limits not just of statutory responsibilities but the inevitable creation of gaps that exist across these boundaries. Once again, the case for effective intervention is not merely to examine what legal services can provide but to recognise the potential for other support agencies to identify justiciable problems and refer clients to advice providers. A policy (or, preferably, legal duty) of avoiding destitution would seek to act preventatively and investment in intervention points which can pick up problems at the earliest stage, rather than at crisis point when an individual seeks help, would support this approach.

## Pathways

Direct awareness of advice services among interviewees was limited, but the study sample verifies the inter-relationship between informal and formal support structures and pathways to advice. Informal networks of family and friends often opened up pathways to advice for our interviewees, as well as providing personal support for the individual to access help, and acting as the advocate for the individual:

Interviewer: [S]o your partner didn't get any help when she got the letters about the court?

Male: No, she didn't really know where to go ...It was just by chance, one of our friends mentioned, 'Oh, have you thought of a DRO [debt relief order]?'

Interviewer: Who did the DRO for her?

Male: ... Step Change Debt Charity.

Male, 30-39, UK national.

"One of my friends wrote to the council. I don't know if she wrote to the council, she wrote to someone and started kicking up a fuss, because I was sleeping rough and it wasn't right."

Male, 30-39, UK national.

While access to advice could come through pure chance, there was some evidence of strategic approaches adopted by service providers and advice agencies to identify or reach those with legal needs. A man who had spent time in a homeless hostel said staff there had assisted him with his benefit claim while another interviewee said that it was through the local council that he became aware of help he could get from Citizens Advice: "It was where you can get the booklets, like in the library where they have the council for the month, what they're doing and people to contact and all that." Certain housing providers and utility companies often provided welfare,

employment or financial advice for tenants, with Citizens Advice also reported to have sought out advisees at food banks. A recently-homeless EEA national had found a telephone number “in the street” that had been deliberately placed at a location where it would be seen by homeless people; calling the number ultimately led to him being put in contact with a provider of emergency accommodation. ‘Jennifer’, who features in Chapter 5, described her experience as follows:

“When I was at the food bank on Friday, just last week, there was a lady in there from the [water company], that’s who I was with. She goes there once a fortnight, and she filled all this form out with me where I’ll get even more help and a 30% thingy, and if anything then happens with the water, they’ll then bring me bottles of water round and all this type of thing ... She just approached me while we were there. She’s getting me the help with that, and she said once I’ve then got the children’s money sorted and over, they’ll reduce it even more because there’s three children using all my hot water.”

Female, age not stated, UK national.

Perhaps unsurprisingly, creditors were also trying to assist individuals with their debts and identifying potential pathways to assist them to do so:

Interviewer: How did you find out about [Step Change]?

Female: I think it was through one of the people that we owe money to, that recommended we contact them.

Female, 30-39, UK national.

Food banks were a dominant feature in the research, acting both as support providers and pathways, and were used routinely as both by other established and dominant organisations, particularly Citizens Advice and Jobcentre Plus:

Interviewer: You said that you’d used the food bank. How did you get to know about the food bank in the first place?

Male: It was the dole who told me in the first place to go to Citizens Advice, and Citizens Advice told me to go to the food bank.

Interviewer: Did they give you some kind of referral to the food bank? Did you have to get a referral or could you just turn up?

Male: Off Citizens Advice, yes.

Male, 40-49, UK national.

Interviewer: Who told you about Citizens Advice?

Male: From the organisation from where I got the food.

Interviewer: The food bank, okay.

Male, 30-39, non-EEA national.

Food banks have been used as part of a new model of co-location, acting as the advice hub. For example, the Child Poverty Action Group (CPAG) established a co-location initiative with food banks, and identified that up to two-thirds of food bank users had problems with their benefits (Perry et al, 2014). Overall, such approaches can promote an integrated delivery of services, particularly for disadvantaged populations to ensure a ‘no wrong door’ approach, to establish a variety of ‘doors’ to access justice (Noone and Digney, 2010).

While strategic support is to be welcomed where it meets legal need, there is also a concern around ‘normalising’ the use of food banks (Loopstra and Lalor, 2017; Lambie-Mumford, 2016; Perry et al, 2014) and, in human rights terms, that externalising this support as a function of charitable or voluntary sector organisations enables the state to avoid its responsibilities to prevent and address this need. In addition, Clarke and Forell (2007) found that ‘people rarely seek assistance from more than one source for each legal issue’, suggesting a strong rationale to ensure that every ‘door’ that is approached is adequately resourced to ensure assistance in



an appropriate and timely manner. The government does not collect official statistics on the use of food banks and so having food banks act unsystematically as a conduit to advice overlooks the need for strategic resourcing of advice. As Pleasence et al (2004) have observed, 'some confusion and desperation' is sometimes evident in choices of sources of help, with some choices 'seemingly inappropriate and unpromising'. Where people make inappropriate choices through lack of legal capability, they must then look again, or be signposted or referred on to new advisers, and each time this happens a proportion will give up. This highlights the importance of a visible and coherent legal services market.

The advice landscape is already complex, so while a multiplicity of 'doors' to advice and support are required, there is still a need to ensure that these different doorways can lead to the right path to justice, rather than convolute that process:

Interviewer: So when you lost your job, did you approach anyone around that time for advice and support on accommodation?

Male: I have to think about it. No, the first thing I did when I lost my job, the next day I went to the Jobcentre. Later, when I was running out of money, I went to the food bank. There was an organisation called [name of housing association] and there was a support worker there and I had a few chats, talking with them, with her, and later there she mentioned about my situation with my landlord, that sort of thing. She also, [name], sent me to the welfare rights officer ...

Interviewer: So they have got their own support officers at that housing association?

Male: That's correct.

Interviewer: And welfare rights, is it Citizens Advice or is it something else?

Male: Welfare rights is more connected with the City Council.

Interviewer: Ah, okay. So they are not part of the City Council but they are funded by the City Council or something like that?

Male: Something like that, yes. I don't know exactly. I hope it's connected.

Interviewer: So the [housing association], is the food bank, or were you directed, referred to them by the food banks or from the food banks? You went to [housing association], how did that happen?

Male: I was once before without food so I know the places to get some vouchers for them. It was the Citizens Advice Bureau.

Interviewer: So you got the voucher for the food bank from Citizens Advice?

Male: That's correct, yes. ... I went nearly to court. Well, I went to court a few times. The ... law centre helped me also because they saw there was a chance that I got evicted, but that didn't happen really.

Interviewer: How did you hear about [the] law centre?

Male: From my welfare rights officer.

...

Interviewer: Has any organisation helped you with your debt situation? Your arrears and debt?

Male: That was my support worker really, at [housing association]. They helped me a lot with it and also the welfare rights officer, he helped me a lot. I appreciate that I have wonderful people around me, help me a lot.  
Male, 60-69, EEA national.

For this individual, the pathway to advice involved routes leading to and from the Jobcentre, food bank, housing association, council, Citizens Advice and a law centre, some of them dealing with the same problem and in some cases dealing with different problems, all of which clustered together, with one particular problem (losing a job) having snowballed into problems with food security, housing, debt and benefits. The lack of awareness and the inability to follow pathways to advice sources is therefore a product of a fragmented advice landscape as much as the individual's legal capability. Allied to this problem is that when resources for legal services are reduced, waiting lists for remaining services become longer, referrals get delayed, opportunities to intervene earlier are missed, and the costs of dealing with more entrenched problems escalate. The result is that 'doors' that would have opened to solutions are closed.

The additional consequence is the risk that people will take the advice that is placed in front of them even though the advice provider may not be the best match for the individual's problems (or may indeed be taking advantage of the vulnerable circumstances of individuals). Some interviewees were not entirely clear what advice provider had been used, but sometimes seemed to feel that in the prevailing circumstances there was no option but to unquestioningly accept the recommendations of the person offering advice, without being clear what other options were available:

"That was sorted by a woman who came out from some kind of Heating Support team, something like the local authority or whatever ... Obviously at the time my head was mashed, honestly. I couldn't remember anything at all. So that poor woman was just doing me a massive favour because she filled in all the paperwork. I just had to say yes or no and sign the bottom of the form. So when she did that I was extremely grateful ... But what she didn't say was, right - now this may not be her fault; she may not have known this. But the people who write off that debt can also write off all your other debts as well. The problem was she didn't ask the question about those other debts; she just asked about the gas and the electric."

Male, 50-59, UK national.

This clearly has implications for advice giving, where advisers are dealing only with part of the problem being presented to them, something which is discussed further below.

## Advice sources

Despite the ad hoc or convoluted pathways to different advice sources, almost all of the interviewees appeared to have sought advice on a legal or financial problem at some point. However, the source of advice, the extent to which the interviewee had engaged with the provider and the perceived quality of advice received varied dramatically. Support was sought from legal practitioners, mainstream advice agencies, other voluntary sector organisations, housing providers, social security advisers, GPs, the private sector and friends, relatives or associates. Interviewees did not always distinguish clearly between the various providers, or remember who had provided advice, and advice services could be used in many different ways, sometimes providing support through a formal legal process such as a court or tribunal, sometimes simply acting as a gatekeeper to other forms of support, typically by providing a referral to a food bank.

Citizens Advice was the advice provider used by a majority of interviewees, some of whom were frequent visitors. Advice was typically sought on social security and debt, the latter ranging from budgeting exercises to negotiating with creditors.

Local government advice services were also quite widely used, especially with social security issues and sometimes with debt. However, the fact that many debtors owed money to their local authority in the form of rent or council tax arrears could be a deterrent to using these services – in the words of one lone parent: "I just assumed because they work for the council that, a question whether, what help they'd give us because they work for them." A small number of interviewees were in contact with social work teams or similar agencies. 'Jennifer' had only recently come into contact with social workers, but hoped they would be able to provide advice on social security matters as well as support with her ongoing family situation.

Utility companies – particularly water undertakers – were the most commonly used private sector advice providers and appeared to be both proactive in seeking out customers in financial difficulty and well-regarded in terms of the assistance offered, which could include price reductions and long-term payment plans for arrears. There were examples of arrears being written off by the company or paid off by a charity associated with the company. Water

undertakers are prohibited by legislation from cutting off a domestic water supply, under Schedule 4A of the Water Industry Act 1991, so working with the debtors is arguably more effective for the industry in recovering its debts, but it also highlights the importance of a statutory duty to avoid harmful consequences to individual service users.

Elected representatives – Members of Parliament, local councillors or members of a devolved legislature – were relatively rarely mentioned as sources of advice. This may be cause for future concern given that for Universal Credit, MPs are the only individuals who will have implicit consent to act on behalf of claimants to engage with work coaches online, as Chapter 3 highlights. Of further concern are the instances where the support provided was not always regarded as useful by interviewees. One interviewee had sought assistance while seeking housing adapted to her mobility problems, but said she had been told only that she was on a housing waiting list for a transfer, while another had contacted a councillor about an application for Personal Independence Payment but was told that “he couldn’t make it go any quicker”. There were some instances where the support was clearly helpful and appreciated, however. A woman who had been at risk of homelessness said she had been allocated suitable housing after “the councillor and the MP fought like crazy”.

A number of claimants had made use of legal representation through a private practice, a duty solicitor consulted at the court, a law centre or an advice provider. This included first encounters with an advice worker or legal practitioner when summoned to court, sometimes on arrival at the court, or preparing for a tribunal. Legal advice was sought on a wide range of matters, although far more interviewees had legal problems – particularly with debt and social security – than engaged legal representation. While all interviewees were asked whether they had received legal aid at any point, most did not know:

Interviewer: Do you know whether [Citizens Advice], they’ve had to get legal aid for you to be able to get hold of some of the documentation, or anything like that?

Male: I haven’t a clue about that.

Interviewer: No, so they haven’t discussed that.

Male: I don’t know anything about legal aid, or anything like that.

Male, 50-59, UK national.

In addition to the lack of awareness by interviewees of legal aid, however, were some strong perceptions of legal aid which may have had an influence on advice-seeking behaviour:

Interviewer: Has anybody looked to get legal aid over the last few years for anything?

Male: No.

Interviewer: Not for the court action, or anything like that, no legal aid?

Male: No, because, obviously, now, as well, legal aid’s really stopped, hasn’t it?

Male, 30-39, UK national.

Interviewer: Have you ever spoken to anybody about legal aid at all?

Male: Only on behalf of my son but not actually for myself, but at the time it was when legal aid was just being withdrawn. They would only take on legal aid cases if there was something like an 80% chance of success.

Interviewer: Was that a local firm that were helping you with that, a local solicitor’s?

Male: Yes.

Interviewer: ... Is that why you didn’t go down that route?

Male: That’s it, yes.

Male, 50-59, UK national.

For other interviewees, legal aid did seem to have played an instrumental role in dealing with their disputes, and therefore in being able to make use of the advice sources available. In the absence of legal aid, one appeared to have entered a contingent fee arrangement for a medical negligence case, anticipating that “the solicitors just take their money out of whatever I win so it’ll probably be all of it I suppose!” The comment here highlights that people sometimes did not know what they were signing up to, elevating the concerns about their lack of legal capability, their heightened vulnerability and their exposure to potential exploitation arising out of desperation, with no other means of meeting their legal needs. It will be important to identify the impact of removing legacy benefits as the gateway to legal aid, with Universal Credit thresholds potentially more difficult to understand and determine, particularly if this builds on a perception that legal aid is no longer available.

Where there is an absence of visible, free advice there is an inevitable potential for individuals to feel they had no other options than to pay for advice:

Interviewer: Are you getting help with the tribunal? Is somebody going along with you?

Female: ... there’s an organisation that say that if you’ve already had your papers sorted and sent to the tribunal, they charge you. They’re supposed to be a voluntary organisation but they charge you £75 to go to the court to fight your case ... I can’t find that kind of money ... No, when I go to court I’ve got no one to help me.

Interviewer: No, and that’s just because you can’t afford the £75 that somebody’s asking?

Female: Well, no, where am I going to get it from?

Female, 50-59, nationality not stated.

While few interviewees reported having to pay for advice, the perception of having to pay for it was enough to put interviewees off seeking it. This perception, combined with a belief that legal aid no longer existed or had such a high threshold for success as to be unobtainable, closed down the little knowledge that interviewees had about pathways to justice.

## Online advice

The Bach Commission (2017) has highlighted its concern about the ‘loss of a physical place’ that individuals can visit for free, with initial support that offers a vital signposting service, something that is seen as particularly important for those who do not, or are unable to, use internet or telephone helplines to solve their legal problems. Around a third of interviewees had sought or availed of advice online, mainly on financial or money-saving matters, but accessing good advice online was not always an easy task. Getting online could be a challenge in itself, with some interviewees lacking a home computer or internet connection, unable to afford to use precious mobile phone credit on data, geographically-distant from a library, or only able to use a computer there for a short period. For one interviewee, the access to public internet resources was complicated by her mental health condition:

Female: ... with my depression I get panic attacks and anxiety attacks, if I’m anywhere crowded, so even going to a library or whatever, I’ve got to go when it’s quiet, to use the computer, because I can’t be around crowds, because I start panicking.

Interviewer: Okay, right, so you haven’t actually got the facilities to do that at home, at the moment?

Female: No. I’ve got a computer, but it just doesn’t get the internet access up here, or I would do it at home.  
Female, 30-39, UK national.

Even those who were successful in finding sources of advice online sometimes preferred to deal with the organisation by telephone or used a combination of electronic and telephone contact while dealing with their problem, while for a small number the internet was a foreign world:

Interviewer: Have you ever tried to seek advice online?

Male: No, I don’t even know how to do that.

Interviewer: That's okay, I just wondered if you searched any advice?

Male: No, what I've done is, I've seen PIP, but no, nothing like that online. I wouldn't even know how, to be quite honest.

Male, 50-59, UK national.

Beyond basic issues of digital access were more fundamental barriers of legal capability, magnified by the need to navigate the internet. McDonald and Wei (2016) found that the most disadvantaged were the group least likely to use a self-help resource to try to resolve their legal problems and our interviewees clearly preferred to, in the words of one, "leave it to the experts", having no confidence in their own abilities to find the answers they needed:

Interviewer: Have you ever tried to find advice on the internet?

Male: Yes, I did.

Interviewer: How did you find the advice on the internet? Was it useful?

Male: Well, they're not ... Sometimes, the question that you raise on the internet, it doesn't give you the actual answer to it. It's got a long list of answers to the question, so it's not specifically directed to what I actually want. With this, it would be better for you to see someone and speak to them in terms of, they're professionals and they would know how to hear your question and then give you an answer.

Male, 50-59, non-EEA national.

Similar blind searches were described by interviewees who simply used a search term such as 'debt', with no real ability to identify or discern the effectiveness of websites that were produced by the search. This lack of legal and digital capability meant that efforts to find a suitable advice source could be compromised. Once again, the concern is around how vulnerable this leaves people, and underlines the importance of a government strategy on providing reliable advice, including via online advice providers.

## Nature of advice queries

Interviewees sought advice on a range of issues, which reflected the clusters of problems that they had acquired and, to some extent, the advice provider that they consulted. Social security was a common issue to seek help with. One woman described getting help from Citizens Advice "to fill forms in because I'm no good at writing forms and that" and then from the welfare rights adviser, funded by the council, to attend the appeal tribunal. Overpayments and hardship payments also formed the subject of advice queries, while one interviewee was planning to ask Citizens Advice to check whether she was already receiving Discretionary Housing Payments. Many of these advice queries represent the system failures that were highlighted in Chapter 3, where claim forms are not user-friendly, or not designed to enable claimants to understand the eligibility criteria; where challenging decisions is often about producing (further) relevant information on which to determine entitlement, or to understand why a claim has been refused; and where the removal of subsistence income leaves individuals having to secure emergency hardship payments. As Chapter 3 argues, if the system was more effective in communicating with, and supporting, claimants the need for additional assistance could reduce. In the absence of getting its house in order, the government should make provision to help manage the fall-out from these problems.

More common than social security benefit queries was advice on debt, often when individuals were overwhelmed by both the problem and the proffered solution. The "nightmare" of constant worry and unsuccessful negotiation with lenders over her debts led one interviewee to contact the National Debtline for advice on what she could do, but she described "the pack" relating to the debt relief order that they sent to her as "overwhelming", along with the risk of paying £90 to apply for an order with no guarantee of success. This again points to systematic issues with legal processes that necessitate advice seeking. If the government is not able to address the problems it creates in the legal system, it would seem incumbent on it to fund support services to help the public deal with these problems.

Housing problems were also raised, with queries understandably directed to housing providers. For some interviewees, raising the matter at a relatively early stage was not effective as the intervention trigger was to be “totally homeless” rather than at risk of such. One of the affected individuals described the organisation concerned as being really helpful in giving all the advice it could “but their hands are tied”. The absence of intervention services here seems short-sighted, given that the cost of preventing homelessness is likely to be lower than the cost of rehousing the homeless. Housing is an issue that is heavily implicated in the circumstances of destitution, but is an area of advice that has been removed from the scope of legal aid. Evidence to the Justice Committee highlights the self-defeating nature of this restriction which means ‘people now cannot get legal advice on a range of landlord and tenant issues, such as tenancy deposit schemes, rent increases, joint tenancies, relationship breakdown ... [i]t is that preventative element that has now gone’. (Justice Committee, 2015). Reinstatement of legal aid funding for such fundamental issues would therefore seem to be a sensible investment to prevent destitution.

One interviewee with immigration concerns, who feared she might be at risk of deportation, had contacted her local law centre and had found the support, even without legal representation, to be very helpful.

While the research continues to point to the incidence of problem clusters, there has been less insight into whether individuals present with problem clusters when they are seeking advice. Just as individuals will not necessarily identify that they have ‘legal’ problems and instead characterise their problems as debt, housing, social security, family, health or employment, they may not present an awareness of the interconnectedness of these problems. One interviewee who was receiving assistance with social security benefits from Citizens Advice had also sought help from the same adviser to get a reduction in his water bill, but it is not clear whether the benefits query triggered other issues to be raised, and if so whether this trigger came from the interviewee or the adviser.

Part of the limitation in individuals presenting the full range of their problems may also connect to the advice provider’s remit: it is not clear whether advisers detect problem clusters, or whether they simply see only the problems that fall within their areas of expertise. The research evidence is that advice providers (including private firms, not-for-profits, and local authority organisations) are limited by time pressures; client reluctance to discuss all their difficulties; and, for many clients, the ability to cope with a physical or mental health problem had an impact upon their ability to participate in the advice sessions and frustrated the process of identifying multiple problems. Given the extent of ‘serious health issues’ identified by Fitzpatrick et al (2016), any intervention strategy aimed at improving access to justice for destitute individuals may need to take account of health needs as a priority feature (Moorhead and Robinson, 2006; Smith et al, 2013). It also reinforces the argument for co-locating advice services in health settings and educating health professionals to identify and refer their patients when they recognise that they are experiencing an underlying justiciable problem. Additionally, resourcing advice services to adopt strategic approaches to identifying problem clusters would seem a worthwhile investment in dealing with destitution.

## Perceptions on the value of advice

Consistent with the research literature on legal outcomes (Tyler, 2010; Moorhead et al, 2008; McKeever, 2013), perceptions of the quality of advice and legal support received could be strongly influenced by the outcome of the interviewee’s legal or financial problem: the better the outcome, the more likely the individual would rate the service highly. An EEA migrant, who had received advice from several sources, was a typical example: “If I had to count with the money which I got, then the best would be the council, because together the refund was like £600.” In fact, it seemed that the main source of advice for this individual had been Citizens Advice and that it was a decision of the local authority (that she was not entitled to housing benefit) that was successfully challenged. On the other hand, one interviewee found that even after her advice provider had negotiated lower debt repayments with her creditors, “it doesn’t help you because you haven’t got the money to pay any”. Another had similarly “lost faith” in a particular advice provider on the basis that “everybody just wants me to go into a payment plan and we just don’t have the money”. A particularly clear example of the outcomes-based gauge of advice quality was the interviewee who praised a welfare adviser who had helped her with a successful Personal Independence Payment appeal but rated a debt advice service as unhelpful because “they just advised that we make agreements with our creditors, and that was it really”. There were exceptions, reflecting the role that legal participation can play in off-setting the outcome effect (McKeever, 2013): an unsuccessful applicant for Personal Independence Payment (albeit with an appeal pending) still praised the support received, describing the ability of

the advice provider to transform his social narrative into a legal one: “I struggle to put things down and they pull things out of me ... They’d tell me some things I couldn’t do, which I didn’t realise I couldn’t do them.”

Some interviewees reported that they had received some useful advice, but perhaps not as much assistance as they required, maybe due to the resources available to the organisation concerned. One had been through a “court case” (or more likely a social security tribunal) for which Citizens Advice had helped him prepare but was unaccompanied on the day: “They told me that it would be better if I was able to take someone with me but then, they couldn’t afford anyone so I went by myself.” In some cases it appeared that interviewees may have ignored or misunderstood advice received. An adviser working for an elected representative had advised a constituent that there was no alternative to repaying a crisis loan, which was undoubtedly true, but she appeared to translate this information as advice to repay the loan as quickly as possible rather than negotiate what might have been a more financially-manageable arrangement.

Some interviewees recognised that the advice they had received was something they could potentially go back to if similar problems arose for them in the future:

Interviewer: *If you got into rent arrears, or got into more debt, or anything like that, do you think you would do anything differently?*

Male: *Probably meet with [Citizens Advice], first, find out more options, and maybe try and get some kind of legal representative earlier on.*

Male, 30-39, UK national.

For others, however, but it was not clear that they would alter their advice-seeking behaviour, but this was as much about emotional fatigue rather than any obvious lack of legal capability:

Interviewer: *What do you think you would do the next time around?*

Male: *I don’t know, I haven’t thought that far ahead yet to be honest with you. I’m still trying to get my life sorted from this last nightmare. I’m not planning for it to happen again to tell you the truth, so I wouldn’t know yet.*

Male, 30-39, UK national.

*I haven’t been to see the people at Shelter, but it’s again, like you know, you have to fight so, so much that sometimes you let things go by the by, and you know you shouldn’t.*

Female, 20-29, UK national.

In itself, this is an issue for concern. If what is required to move individuals out of destitution is, among other things, improved access to advice and support to intervene on justiciable issues, then the pathway to those advice services needs to be clear, free from obstacles, and with the potential to lead to better outcomes. Where those basic requirements are missing, it will be an inevitable consequence that individuals will feel more hopeless about seeking advice and support, and the potential to escape destitution will become more remote.

## Conclusion

Our data shows that there are identifiable intervention points that could conceivably assist with many of the difficulties in resolving the problems faced by our study sample. These intervention points sit alongside recognisable patterns of advice-seeking behaviour predicated on lack of awareness of legal rights or assistance to enforce them. This report identifies three main recommendations which would enable and support effective interventions, opening pathways to justice that could avoid or prevent destitution. Within each of these main recommendations there are a number of related recommendations that can support them.

The first recommendation is that the government should resource advice services to identify problem clusters, rather than only being able to focus on the problems their service can assist with. In support of this, advice services should be given sufficient flexibility within any government funding contracts to fund advisers to identify additional justiciable issues beyond the one that the client presents with. Where additional issues are identified, funders should resource advisers to either deal directly with these problems or to support individuals to take their problems to appropriate services. In addition, the government should develop a strategy to raise



awareness of advice services and the value of advice through the resourcing and promotion of a visible and coherent legal services market. This should include a focus on the provision of reliable advice that those in vulnerable circumstances can access, including via online advice providers. The government should also collect data systematically on the non-traditional services that act as conduits for advice, including housing associations, food banks and other crisis services, and identify how the strategic resourcing of advice might respond to these patterns of advice-seeking behaviour.

The second recommendation is for the government to partially reinstate legal aid funding to support preventative and remedial action that will help avoid destitution, primarily in the areas of housing, debt and social security, particularly appeals against sanctions. The data points to systematic issues with administrative and legal processes that necessitate advice seeking, particularly in relation to social security and debt. If the government is not able to address the problems it creates in the administrative/justice system, it would seem incumbent on it to fund support for individual advisers and contract services to help the public deal with these problems. Reinstatement of legal aid funding for such fundamental issues should be understood as a sensible investment to prevent destitution, and counteracting the perception that legal aid is no longer available. In addition, the government should identify the impact of removing legacy benefits as the gateway to legal aid, with Universal Credit thresholds potentially more difficult to understand and determine, particularly if this builds on a perception that legal aid is no longer available.

Finally, the government should develop a strategy to facilitate the co-location of legal and health services and enable crisis and support workers to identify justiciable issues that clients need help to deal with. The report's central recommendation is for the government to implement a statutory duty to avoid destitution across all of its services. In support of this, funding should be targeted to enable agencies to act preventatively and support investment in intervention points which can pick up problems at the earliest stage, rather than at crisis point. In order to achieve this, the government should provide training and support for crisis and health service workers to identify underlying justiciable problems. Additional funding should be made available to support the referral of clients/patients to appropriate advice services. The government should model co-location of health and legal services based on evaluations of similar models and monitor their effectiveness in identifying and dealing with the triggers for destitution.

## 5. Case studies on destitution and paths to justice

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### Introduction

Previous chapters have made extensive use of examples drawn from interviews with the 40 destitute or recently-destitute research participants. This chapter takes a more detailed look at the pathway to, through and (with luck) out of destitution walked by two of the interviewees. While it is inevitably the lot of the researcher to look for patterns and commonalities in the experiences of participants, one of the findings that emerges most clearly from the project is that no two people's experiences of destitution are the same. Destitution results from, and produces, a cluster of legal and non-legal problems that vary dramatically at the level of the individual. The intention in homing in on the journeys of a small number of interviewees, then, is not to suggest that their lives are representative of the destitute in the UK today. Nonetheless, the complex, interconnected and sometimes overwhelming nature of the problems they reported and the often-chaotic nature of their lives mean their stories are *illustrative* of both the slippery slope that leads to destitution and the uphill battle that faces those seeking to escape its clutches. They also highlight the inadequacy of a narrow focus on what might traditionally be regarded as 'legal' issues in exploring the connections between destitution and (in)justice and identifying measures likely to be of assistance in improving the situation of those affected.

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'Jennifer', the first case study, is a case in point. From a legal problem-solving perspective, this interviewee had in many ways done all the right things, engaging advice from multiple sources and attempting to address a range of financial and administrative justice issues. These efforts, though, were undermined by the sheer number of problems, the fragmented nature of the advice landscape and the individual's own capacity to cope due to her health, disabilities and family circumstances. Ultimately, two of the most significant causes of destitution could not be addressed through legal advice: a close relative's illness and the inadequacy of social security benefits. 'Rebecca' likewise had a tangle of family, health, administrative justice and financial problems, in addition to criminal justice issues as both a past offender and a recent victim. She, too, had engaged in some advice seeking. A key point emerging from her case is that, faced with social security problems that expert advice might have gone a long way towards resolving, the administration of the system had failed to alert her to the fact that there might be a legal solution, or this message had not been understood.

## ‘Jennifer’

‘Jennifer’ is a single female who lives on the border between Wales and north-west England, who did not reveal her age in the study. Her own children are grown up, but at the time of interview she had three grandchildren living with her in what she anticipated being a “long-termish” arrangement. ‘Jennifer’ had left a job shortly before the interview due to health problems, but had only been in the position for a little over a year, most of which was spent on sick leave. By the time of interview, she was in receipt of Employment and Support Allowance (work-related activity group) and housing benefit.

### Pathways to destitution

‘Jennifer’s’ journey to destitution broadly reflects the division between underlying vulnerabilities and ultimate triggers identified in Chapter 2, although not necessarily in a neat, linear progression. Three of the four broad sources of vulnerability are present, namely health-, family- and employment-related issues. The interviewee listed a large number of physical and mental health conditions including arthritis, carpal tunnel syndrome, Raynaud’s disease, diabetes, asthma, cholesterol issues, poor circulation, anxiety and depression. These health problems led directly to the loss of her most recent paid job, having caused her to be off sick for up to 12 of the 14 months for which she was officially employed. Health-related disruption of paid employment is likely to have been a longer-running issue. While this labour market exclusion clearly had a limiting effect on ‘Jennifer’s’ income, her family situation was the more direct contributor to *destitution*. Specifically, a “breakdown” affecting her daughter an unspecified length of time prior to the interview had resulted in the interviewee having care of three grandchildren for what she anticipated would be an extended period, resulting in a considerable increase in living costs.

As noted in Chapter 2, health problems and labour market exclusion result in dependence on social security, often implying reduced income; a low income can lead to debt. Social security problems and unsustainable debt lead to housing problems. All three of these triggers are present in the case study, although the interviewee’s housing problems were a consequence of destitution as much as a cause. As with many of the UK citizen interviewees, social security is the major trigger. Already under pressure because her house had a spare bedroom and because of an unexplained deduction from her Employment and Support Allowance, the immediate cause of ‘Jennifer’s’ descent from struggling to destitute was the failure of her social security benefits to keep up with the sudden expansion of her household to include three grandchildren. Child Benefit and Child Tax Credits continued to be paid to the interviewee’s daughter, the mother of the children. Although the interviewee was pursuing an application, this had been delayed by a misunderstanding or poor advice: she believed she had made an application for Child Tax Credit by telephone, only to be told at a later date that this was impossible and that a paper form would have to be submitted. Far from the non-adversarial ideal, here administrative justice sets up a contest, not only between the claimant and the statutory agencies, but between the claimant and her own daughter. While furious that her daughter had for some time “been receiving all the children’s money, and I’ve not had a penny”, ‘Jennifer’ nonetheless appeared to regret that for her to gain desperately needed income her daughter would lose out – and receive a “big bill” for the payments received in recent months.

Housing problems were an ongoing but evolving feature of ‘Jennifer’s’ story. Whether the primary issue is under-occupation or overcrowding, her situation illustrates the shortcomings of a policy based on the at-face-value defensible objective of making the most efficient use of social housing stock. The interviewee previously lived in a property with two spare bedrooms, resulting in a £115 per month shortfall between her housing benefit and rent due to the ‘bedroom tax’. The policy intent of encouraging her to downsize was eventually realised, but only after a convoluted administrative procedure involving two local authorities. The policy clashed with both the claimant’s own aspirations – to retain one spare bedroom so that her grandchildren could visit – and the unavailability of two-bedroom properties within her then-local government district. A two-bedroom house was eventually sourced through a “council exchange” with a tenant in another district, but if downsizing eased the immediate problem (reducing the housing benefit shortfall to £86 per month) it also sowed the seeds of the next one. By the time of interview, ‘Jennifer’ was sleeping on the sofa so that her two grandsons could sleep in one bedroom and her granddaughter in the other – an arrangement reportedly viewed as “perfectly fine” by a health visitor but unacceptable by a social worker. Even the physical presence of the three grandchildren was not sufficient to prove that the property was no longer under-occupied and a reduction was still being applied to her housing benefit, albeit that a Discretionary Housing Payment was making up the difference for the time being.

Under-occupation of housing and the resulting housing benefit shortfall was one of the main factors underpinning ‘Jennifer’s’ debts. £2,000 of rent arrears had been accumulated by the time she left the three-

bedroom property; this was paid off with the help of a charity that supports ex-service personnel (her late husband had been in the armed forces). A transfer to a smaller property was a condition of the grant – a logical stipulation in the circumstances, but arguably an unfortunate one in light of subsequent developments. This left an unspecified amount of council tax arrears as the biggest current problem, less because of the size of the debt than the vigour with which it was pursued by the local authority. The matter had been taken to court more than once, but neither debtor nor creditor appeared to have gained anything from the litigation, which merely resulted in an extra charge of £140 being added to the already-unpayable total. Energy and water arrears from a previous address were in the process of being dealt with through a debt relief order, with outstanding water bills from the current address being paid off at a manageable five pounds per fortnight. Whereas the council was portrayed as a particularly unforgiving creditor, the water company was described as “brilliant” in its efforts to assist. The most upsetting debt for the interviewee was her smallest, £80 to the milkman, which she admitted had caused her to avoid leaving the house or coming to the door, presumably due to the likely embarrassment of coming into contact with the person to whom the money was owed.

## Responses to destitution

‘Jennifer’s’ attempt to support herself and three young grandchildren on £62 per week after housing costs speaks to a failure on the part of statutory services to prevent destitution. True, her situation would have been worse still were it not for receipt of a Discretionary Housing Payment, but the interviewee was all too aware that she could not count on her DHP as a long term solution. Even with the DHP, her income of around £248 in a typical month had to cover utility bills (£32), car insurance (£42 – viewed as a necessity due to her rural location) and unspecified amounts for telephone charges and petrol before any shopping could be done. Without it, there would be a further £86 per month housing benefit shortfall to make up. Residual local government welfare systems and the ‘Big Society’ provided a safety net of sorts, but one that was neither universal, comprehensive nor free of stigma, sometimes not even free of charge.

Charitable assistance was a vital lifeline for ‘Jennifer’. Use of a food bank had allowed her to ensure her grandchildren were reasonably well fed, even if she reported subsisting on toast and cereal herself. School holidays were particularly challenging as the children received free school meals during term time. The food bank also provided toiletries, but not clothes, which some of the children needed badly and an alternative charitable source for these was being actively sought. Reliance on food aid was a source of concern for the interviewee, who admitted she had been embarrassed at using the food bank. A volunteer’s attempt to offer reassurance was apparently of some comfort, but in many ways reinforces the stigma around the service by encouraging the ‘deserving’ interviewee to differentiate herself from other users who “will just take anything and everything that they can get their hands on”. Another food bank-type service had been used, but as this levied a membership fee of four pounds per week and resulted in some travel costs, the interviewee ultimately concluded that she could obtain just as much food in local shops for the cost of attendance.

While survival was clearly ‘Jennifer’s’ first priority, efforts to address the underlying problems, legal or otherwise, leading to her state of destitution were not absent. These were effective in managing the symptoms of destitution, but at the time of interview had only been partly successful in addressing the underlying causes. The “TAF lady” (Team Around the Family support worker) at the primary school attended by some of the grandchildren had been particularly useful, arranging food bank referrals, early admission to the nursery unit for the youngest child – freeing up time for housework – and providing additional support outside the school term. A social worker was also involved with the family, apparently at the request of the interviewee as her concerns about her daughter’s behaviour escalated. The armed forces-linked charity that helped with payment of the previous rent arrears had not only provided the grant, but assisted with the application and with the interviewee’s request for a housing transfer. Two advice workers had offered assistance with the management of other debts. A local government worker, encountered at court when the interviewee had been summoned in connection with rent arrears, had helped make arrangements for a debt relief order. Unfortunately, moving to another local government district as a result of having to downsize meant the relationship with this individual was about to be lost. An accommodation on water arrears had been reached following consultation with an advice worker engaged by the water company, who had been at the food bank on one of the occasions when the interviewee attended.

Advice from a range of sources, then, had been of use in meeting survival needs, reducing outgoings on housing and making debt repayments more manageable, although it should be noted that the negotiations towards a debt relief order would have been in vain had a relative not been able to pay half of the fee. Social security

problems, the single greatest contributor to destitution, had not been resolved and did not appear to have been associated with any significant advice seeking up to the time of interview – although ‘Jennifer’ did comment that she would be seeking guidance from her social worker and the “TAF lady”. The interviewee did not know why her Employment and Support Allowance payment was subject to a reduction of £11 per week, stating that due to dyslexia she struggled to understand communications about her benefits, and did not seem to have made any serious effort to discover the reason. On the more pressing matter of her Child Benefit and Child Tax Credit applications, an initial attempt to handle these unsupported had clearly been unproductive and it was on this front that assistance was now being sought.

### A pathway out of destitution?

There being no suggestion that the employer had acted unlawfully in terminating ‘Jennifer’s’ employment, none of the underlying sources of vulnerability to destitution can be characterised as justiciable problems. It is therefore difficult to identify any point of legal intervention where the journey to destitution might have been halted at this early stage. Some form of family mediation *might* have defused the simmering dispute between ‘Jennifer’ and her daughter about the receipt of child-related benefits that was coming to a head at the time of interview, helping to bring about a swifter resolution to one of the social security problems and arguably the immediate trigger of destitution.

The scope for legal intervention is greater when the focus shifts to the triggers of destitution. Indeed, thanks to engagement with various advice workers the interviewee had already seen her debt problems alleviated to some extent and was on the verge of agreeing a debt relief order in respect of others. On the other hand, the most obviously legal intervention of all – litigation in connection with unpaid council tax – had neither reduced the debt burden nor made repayment any more likely. The involvement of advice workers from several agencies in itself illustrates the challenges individuals face in seeking assistance with legal problems. One advice provider was exclusively concerned with water arrears; a second only provided assistance with rent arrears, and was only available to the interviewee because of her husband’s military service; the third seemed to have a wider focus in terms of the debts on which he could advise, but could only help residents of a defined geographical area. Receipt of advice initially appeared to have eased the interviewee’s housing problems, but in the event proved to have stored up new problems for the near future as the arrival of her grandchildren meant the new, smaller house was overcrowded.

Ultimately, ‘Jennifer’s’ greatest problem at the time of interview was lack of money. Her income of £62 per week after housing costs was less than half of the JRF destitution threshold for a lone parent with three children (£130) and even further below the proposed legal threshold derived from the level of asylum support (£147.80). Restoration of her Employment and Support Allowance to the full rate alongside a successful claim for Child Benefit and Child Tax Credit might see her income rise to £292.06 per week, although in practice this could be reduced by the benefit cap.<sup>9</sup> Given the reported difficulty of understanding communications from DWP and the misunderstanding around the application process for Child Tax Credit, there is clear potential for expert advice to expedite the pathway out of destitution for this individual. An adviser might also be able to offer a view as to whether, given her health issues, the interviewee should apply for Personal Independence Payment, which some participants reported had made a considerable difference to their financial circumstances. A final point to note is that if the interviewee were in an area where she would have to apply for Universal Credit instead of Employment and Support Allowance and Child Tax Credit, her maximum income would only be £228.76 as the two-child limit to support would apply and no family element would be paid (Welfare Reform and Work Act 2016 s14). While well above either destitution threshold, this would still be some distance below the relative poverty threshold for even a lone parent with two children, which was £297 in 2015-16 (DWP, 2017e).

### ‘Rebecca’

The second case study, ‘Rebecca’, is a 27-year-old single female without dependants, originally from greater London but now living in north-east England. At the time of the interview she had recently emerged from a relationship she described as characterised by coercive control and financial abuse. Currently unemployed, she was in receipt of Universal Credit as a jobseeker. The most pressing issue in the interviewee’s life, though, was the looming prospect of eviction from her home due to rent arrears.

## Pathways to destitution

Again, 'Rebecca's' pathway to destitution encompasses a range of underlying vulnerabilities and immediate triggers. The underlying causes include family issues, closely linked to experiences of crime (as a victim) and labour market exclusion, as well as health problems and the legacy of offences committed sometime in the past. The recently-ended relationship had exposed the interviewee to domestic abuse, which mainly involved not being allowed to take on paid work – "every time I got a job he made me leave my job". Although no longer with the individual concerned, the interviewee continued to receive "weird text messages" and occasional threats that items the couple had bought together would be taken away. It was anticipated that freedom from the relationship would bring opportunities to obtain more sustainable employment, but for the time being jobseeking was hampered by lack of public transport, more pressing housing problems and anxiety. Since the mental health and housing problems both stemmed from destitution, in this case labour market exclusion was both cause and consequence of destitution. The interviewee had a history of drug addiction – although she stated that she was clean by the time of interview – and at least some of her criminal convictions were drug related; although these offences had occurred up to nine years previously, fines were still being paid off.

These underlying issues paved the way to the three recurring triggers of destitution: problems with social security, debt and housing. Regular, enforced transitions in and out of paid work had played havoc with benefit entitlements over a prolonged period. Each new claim for Jobseeker's Allowance was reported to result in a wait of up to six weeks for a first payment, with Universal Credit regarded as a significant improvement as the claim could continue alongside low-paid work. It might be argued that the JSA delays were the claimant's 'fault', having been caused in part by the fact that she had no valid proof of identity, but without any income she also had no money to purchase a replacement birth certificate. Once in receipt of benefit, compliance had proved problematic. The interviewee admitted to having a poor memory, as a result of which she had experienced several four-week sanctions due to missed appointments. These stoppages potentially sowed the seeds of future sanctions – with no money to pay the bill, the interviewee's telephone had been cut off, leaving her unable to use it to keep in contact with Jobcentre Plus or for the required 35 hours per week of jobseeking.

Social security problems were closely bound up with debt and housing issues. As a single person under 35, following the break-up of her relationship 'Rebecca' was only entitled to local housing allowance at the shared accommodation rate – currently £65 per week for her area. However, she was living alone in a two-bedroom house – moved into, she said, at the behest of her ex-partner – in which the rent charged appeared to be slightly over the LHA for a property of its size. Consequently, she was required to pay £100 per month towards the rent, over and above the housing element of Universal Credit received. This had proved unsustainable and the interviewee was facing eviction due to rent arrears. An advance and budgeting loans received during a benefit delay accounted for the largest monthly debt repayment – £98 – alongside £40 for criminal fines and £16 to a telecommunications provider. Water arrears going back eight months were not being repaid at the time of interview. While the exact level of deductions tended to vary without advance warning, out of a total Universal Credit payment of £600, the interviewee stated that only £82 per month was typically available for day-to-day living costs,<sup>10</sup> from which a small contribution towards council tax would have to be made. This falls some way below the JRF destitution threshold for a single adult of £70 per week after housing costs, or the proposed legal threshold of £36.95 per week at the time of interview.

## Responses to destitution

Like the previous case study, 'Rebecca' had shown some agency in seeking to address the issues associated with destitution, but the cluster of legal and non-legal problems experienced meant this was no easy task. On such a low income – and, presumably, no income at all after housing costs during sanction periods – the interviewee's first priority was not finding a legal solution to her destitution, but meeting her survival needs. This task was not helped by her housing, which was described as being so poorly insulated that it was necessary to run the heating more or less constantly to feel any benefit. The interviewee had attended a food bank on five or six occasions, having been referred directly by Jobcentre Plus (rather than via an advice provider), demonstrating the extent to which reliance on these voluntary sector welfare services has become institutionalised. Unlike other participants, she did not believe there was any limit to how many times she could use the service. While the food bank volunteers were described as "lovely", this did not prevent her from running out of food, while the toiletries and sanitary products supplied were not always ideal and no clothing was available, so that shoes in particular were badly needed. Despite this evidence of serious hardship, Jobcentre Plus staff were not prepared to offer a hardship payment or any additional support beyond the food bank referral. Potential sources of informal support



were out of reach due to the interviewee's geographical distance from her family and the fact that any friends in her current area were drug users with whom she did not wish to re-engage.

Several examples of advice seeking were reported. The interviewee had used a solicitor in connection with one of her previous criminal charges. More recently, she had completed an initial consultation with Citizens Advice with a view to appealing against the current level of deductions from her benefit, although the full appointment was still pending at the time of interview. The adviser had suggested the interviewee might be entitled to Employment and Support Allowance on account of her stress-related illness, which was causing alopecia, memory loss and reluctance to leave the house. Contact had also been made with a housing charity, but other than advising that the interviewee would be unlikely to qualify for a Discretionary Housing Payment the individual spoken to could not offer any assistance until after eviction.

### A pathway out of destitution?

For 'Rebecca', the most obvious route out of destitution consists of reduced housing costs, stability of income and increased income. The possible contribution of legal interventions to achieving this is necessarily limited, but it is possible to identify some potential points of intervention. As a young, single person with no dependants and whose impending homelessness is not the result of a flood, fire or similar emergency, 'Rebecca' is unlikely to be recognised as being in priority need for accommodation, although on becoming homeless the local authority would have to afford her 'reasonable preference' if she were to apply for social housing (Housing Act 1996 s167, 189). Regardless of sector, the key will be to find housing where the housing element of Universal Credit covers all, or nearly all, of the rent. Housing advice had already been sought by the time of interview, and might help with a future application for social housing, but finding a suitable housing solution is ultimately a question of availability, the interviewee having indicated that returning to her parents' home in London – 260 miles away – was not an option.

Migration from Jobseeker's Allowance to Universal Credit had already resulted in greater stability of income as claims would no longer be interrupted by transitions into and out of paid employment. At the time of interview, social security advice had already identified a potential option for further stabilisation, by applying for Employment and Support Allowance (or, perhaps, Universal Credit with limited capability for work). 'Rebecca' might also have benefitted from advice during one of her previous sanctions. Asked whether she had received a hardship payment, she replied: "No, nothing and I just had to go to a food bank they said." Whether this means an application for a payment was unsuccessful; an informal enquiry elicited the response that there was no point applying; or the possibility of a hardship payment was never discussed, is not clear. Advice might have been useful in respect of two other issues. Despite having separated from her former partner prior the interview, 'Rebecca' still had contact from him from time to time and, for the time being at least, was still living at the address they had intended to share. Civil and criminal law solutions could be available if the ex-partner were to make continued attempts to exert control and there would be merit in establishing what these are in case it should become necessary to seek intervention at short notice. There was no evidence that such enquiries had been made, nor did the interviewee appear to have sought advice on her debts, which other participants (including 'Jennifer') had found productive.

From the interviewee's own perspective, though, the most promising route out of destitution did not involve any legal intervention, but entry to paid employment. The end of the abusive relationship certainly held out the prospect of being able to hold down paid work for a sustained period and the transition from Jobseeker's Allowance to Universal Credit removes a further psychological barrier to employment, as the impact on social security entitlements becomes less disruptive. However, health problems – linked to poverty and experiences of a punitive out-of-work benefits system – remained a barrier to jobseeking at the time of interview.

## Discussion

The two case studies are among the clearest examples in the study of how a cluster of legal and non-legal problems develops around individuals on the pathway to destitution. Their attempts to deal with these problems (particularly in the case of 'Jennifer') simultaneously demonstrate the positive contribution legal advice can make to addressing particular problems; its frequent inadequacy when it comes to dealing with the cluster as a whole; and the role of problems that legal advice cannot remedy in producing and entrenching destitution. A number of key issues highlighted in previous chapters form part of the interviewees' stories and are now discussed in turn.



The first concerns the capacity of individuals experiencing destitution to deal with the range of problems they face. Simply, does the person have the cognitive bandwidth to recognise the various problems within his or her unique cluster; to appreciate that some of these are legal in nature; to know how to address them or where to seek advice and then commit the necessary energy to doing so (Gandy et al, 2016)? ‘Jennifer’ did not even have time to clean her own home until her youngest grandchild was accepted early by the nursery unit, so preoccupied was she with the adjustment to guardianship of three young children; the ongoing fallout from her daughter’s mental health problems and the struggle to meet the household’s most basic survival needs. Dealing with her debt and previous housing problems had been a huge task; little wonder, then, that a benefit application fraught with emotional conflict because of the implications for her daughter had descended into a drawn-out process. Add to the mix the need to comply with conditions associated with the ESA work-related activity group and there is a clear risk of further reduction of an already-meagre income due to sanctions. ‘Rebecca’s’ ability to address her labour market exclusion had been damaged by the domestic abuse she experienced. Although the relationship had ended before the interview, there were hints at ongoing, unsettling contact that might continue to limit cognitive capacity to deal with other problems. This abuse was also a potential contributor to what appeared to be deteriorating mental health issues, although sanctions and severe poverty were described as the main factors. Anxiety, reluctance to leave the house and difficulty engaging with other people are unlikely to be conducive to compliance with benefit conditions, conveying the possible existence of good reason for non-compliance (see below), jobseeking or accessing support with the various problems described.

The interviewees’ social security problems can be linked to both policy and the administration of the system. In policy terms, the removal of the premium previously paid to ESA claimants in the work-related activity group (Welfare Reform and Work Act 2016 s15) forms part of a suite of measures intended to move claimants back towards the paid labour market. Given that ‘Jennifer’ was technically in paid employment until a short time before the interview, but had been too ill to attend work for a year, *and* now had to expend her energies on considerable family responsibilities, this seems an improbable objective for her. It was clear that a return to employment would depend on improved health and greater family stability. In such circumstances, the claimant’s income had been cut by £29 per week compared to those who were in receipt of ESA prior to April 2017 with no likelihood of impact on her labour market orientation. ‘Rebecca’ was keen to return to paid employment and her chequered employment history had mainly been a result of domestic abuse rather than illness. However, by the time of the interview her health had become a barrier to finding a job, and consequently moving to ESA or Universal Credit with limited capability for work was potentially on the agenda. Again, prior to April 2017 this would have brought much-needed additional income, but following the reform it would not. Nonetheless, transition to a reduced-conditionality claimant group would be advantageous as the threat of further sanctions would be reduced, although probably not removed altogether as claimants in the work-related activity/limited capability for work group are still required to attend compulsory meetings. The interviewee herself aspired to return to paid work. However, her hopes of doing so appeared to have become more remote; she was one of a number of participants who seemed to have become more distant from the labour market as a result of (normally mental) health problems associated with sanctions or the stresses of complying with benefit conditions.

The various housing benefit reforms that affected the interviewees were similarly introduced in pursuit of policy objectives with which the interviewees felt unable to comply. Both stories show that the envisaged seamless transfer of social and private tenants between properties as their family circumstances evolve is simply not matched by reality. ‘Rebecca’ depicted her former partner as the main driver of her move to her current, unaffordable accommodation. Although he ended the relationship before they had actually moved in, it was too late for her to remain at her previous address. With two bedrooms, the property was in any case larger than the local housing allowance for a childless couple would cover, but the (presumably unforeseen) end of the relationship and further reduction of the LHA to which the interviewee was entitled shows the social security system responding to traumatic life events faster than the individual can adjust. ‘Jennifer’, a social tenant, had initially struggled to downsize to a two-bedroom house, and was now stuck in one despite requiring more space. The fact that the interviewee wanted two bedrooms when, according to the size criteria, she only required one shows that individuals’ perceptions of their family needs do not always match the state’s. There was no indication that the interviewee had applied for Personal Independence Payment, but here, too, there is a possibility that the tightening of eligibility criteria inherent in the introduction of the new benefit (to replace Disability Living Allowance) might result in her missing out on support if she were to do so (Harris, 2014). At the same time, several interviewees’ effective reliance on PIP/DLA as an additional income replacement benefit is to ascribe to disability benefits a function they were never intended to fulfil. If JSA, ESA and UC are insufficient to meet

recipients' essential needs, the better solution is to increase the level of these benefits, not to rely on a payment whose intended purpose is to assist with the additional costs of disability.

Meanwhile, the administration or operation in practice of the social security system appeared to place barriers in the way of each interviewee accessing benefits to which she should have been entitled. The fragmented nature of the system is the first. Claiming ESA, housing benefit, Discretionary Housing Payment, Child Benefit and Child Tax Credit required 'Jennifer' to deal with three separate authorities – local government, DWP and HMRC (a situation the introduction of Universal Credit might be expected to improve to some extent). As noted, the interviewee's list of long-term physical and mental health complaints raises the possibility that she might have a basis for an application for PIP. There is a question of whether a successful application for ESA ought to automatically trigger advice on the application process for PIP, or even consideration of eligibility on the basis of the same submission of evidence, much like a single application for Universal Credit takes the place of separate applications for multiple legacy benefits, or a wider benefit 'health check'.

Second, despite living in an overcrowded house since the arrival of her grandchildren, 'Jennifer's' housing benefit continued to be reduced for under-occupation, albeit that a Discretionary Housing Payment was being received. To avoid the 'bedroom tax' it was necessary to prove that the grandchildren were living with the interviewee. While the legislation does not specify the means by which 'the relevant authority' must be 'satisfied' that a child 'occupies the claimant's dwelling as their home' (Housing Benefit Regulations 2006 reg B13), the local authority demanded a live claim for Child Benefit as evidence. Acceptance of alternative evidence that the interviewee's home was the children's main place of residence would have avoided a considerable amount of effort and stress associated with the DHP application and the possibility that the award might not continue indefinitely. The issue would not have arisen were it not for the difficulty the interviewee had experienced in establishing her claim to child-related benefits. In part this appeared to result from obstructiveness on the part of her daughter, but maladministration also seemed to play a role. The interviewee said HMRC had led her to believe that she could make a claim for Child Tax Credit by telephone, and was extremely distressed to discover she could not. Communication about her ESA claim had also been an issue – the interviewee knew a weekly reduction of £11 was applied to her benefit, but (whether due to failure to supply information or because the information was not understood) did not know why. Benefit advice was being sought at the time of interview and it is possible that some solutions might be found with expert guidance.

'Rebecca's' primary social security problem was sanctions. Here, too, there was evidence that the system might have operated in a way that was more beneficial to the claimant than proved to be the case in practice. Sanctions had mainly been imposed for failure to attend meetings at Jobcentre Plus. The interviewee appeared to blame herself for these failures, observing that "I'm terrible with appointments and that". However, the sanction might have been avoided had the interviewee been able to demonstrate good reason for her non-attendance. While the legislation does not define what constitutes good reason for non-compliance with benefit conditions, the guidance to decision-makers shows that stress associated with financial, housing or family problems, mental health problems more generally or domestic abuse can result in conditions or sanctions being set aside (DWP, 2013/2018a). Since 'Rebecca' potentially ticks *all* of these boxes, the question must be asked whether the decision-maker was aware of her circumstances, made any effort to discover whether any good reason applied or informed her that there can be factors that lead to a sanction being waived. As noted above, no hardship payment was received during any of the sanctions, although the extent to which the matter was discussed was not clear from the data. If a decision *was* taken that there was no eligibility for a hardship payment, then depending on the grounds there might have been a basis to request reconsideration or appeal. The first possible ground for refusal might be continued non-compliance with the conditions for receipt of the benefit – there is insufficient information in the data to determine whether the interviewee was compliant or not subsequent to the initial missed appointment. Alternatively, the decision-maker might have considered that the interviewee was not in hardship – that is, unable to meet her 'immediate, essential and most basic needs' for accommodation, heating, food and hygiene, *only* because of the sanction (DWP, 2013/2018b: 7). It would seem a questionable conclusion that the interviewee was able to fulfil her essential needs – even with the aid of a food bank, she reported food shortages and difficulty meeting her hygiene and heating needs. Housing costs £100 per month in excess of the local housing allowance would self-evidently be unaffordable on the suspension of the personal allowance, although the decision-maker might be entitled to take the view that this was because of the rent being in excess of the LHA and not because of the sanction. There is a clear need for sanctioned claimants to be informed of their right to seek a hardship payment and preferably receive an automatic referral to an advice service, one of the recommendations of Northern Ireland's Welfare Reform Mitigations Working Group (2016). This could help

them determine whether the sanction could be challenged or make a more persuasive case for the award of a hardship payment.

Although both interviewees had attempted to address the many challenges in their lives, the nature of the advice landscape and the interviewees' capacity to act on the advice received ensured this process was far from straightforward. Given the diversity of issues present, a 'one-stop shop' for financial, legal, housing and welfare advice, employment services, family support and referral to emergency assistance would have been invaluable. While this aspiration has underpinned Luxembourg's move towards integrated social welfare offices since 2010 (ECSR, 2013), in the same period advice provision in the UK has become increasingly fragmented. Neither interviewee appeared to live in an absolute advice desert (Justice Committee, 2011), but advice seeking was hampered by limitations in the thematic or geographical scope of services (although 'Jennifer' was the beneficiary of one advice service targeted at a specific class of people). Fortunately, work on 'Jennifer's' debt relief order was at an advanced stage by the time she relocated to a different local government district, outside the area covered by her debt adviser, who was willing to see through the final stages of the task before closing the case. Had the interviewee been unable to access the funds necessary to pay for the DRO from family members, she might have been back to square one. Ultimately, the utility of debt advice must be limited when the basic problem – underpinning the debts – is lack of income. Whether due to lack of availability, lack of awareness or lack of time, 'Jennifer' did not appear to have received any previous social security advice, which could have helped greatly. Whether advisers failed to pick up on this significant additional need or it simply fell outside their remit is unknown.

The fragmented nature of advice provision and the gateways to eligibility similarly formed a potential barrier to the resolution of 'Rebecca's' problems. Both benefit and housing advice had been sought, but from different sources, with housing advice not actually available in advance of eviction. In common with a number of participants, the interviewee was not clear what sort of organisation had been approached for housing advice – she *thought* it was a charity, but could not be sure, which might have implications for whether there is a cost associated with the service. There was no indication that debt advice had been sought – given the diversity of debts reported, this might have been useful, albeit that the most significant debts in terms of the monthly repayment (a benefit advance, budgeting loan and criminal fines) were owed to public authorities and were therefore, according to other interviewees' experiences, unlikely to be waived. Nonetheless, there is a possibility that advice on private debt would be beneficial. Other interviewees with water arrears, including 'Jennifer', found their supplier to be both a good source of advice on debt management and fairly accommodating in terms of repayment plans. As the total level of private debt was not stated during the interview, it is difficult to determine whether the £90 cost of a debt relief order would be a good investment, but the option might be worth exploring with expert advice, particularly if there were a possibility of rent arrears continuing to be pursued post-eviction.

Finally, the case studies illustrate the absence of any adequate duty on the part of the state to prevent destitution. Prohibiting deductions from an ESA payment that represents the sole income after housing costs for a household of four people would not come close to lifting 'Jennifer's' income above the destitution threshold, but would improve the situation to some extent. On the other hand, 'Rebecca' was losing most of her income after housing costs to repayments; in the absence of these deductions her income would still have been below the JRF destitution threshold, but it would have been above the proposed legal threshold for a single person.<sup>11</sup> An income floor below which no recovery of overpayments or other debt can be made, then, might form a useful part of a destitution duty. A similar proviso might be applied to the 'bedroom tax' whereby housing benefit cannot be reduced if doing so would result in destitution and the claimant is already making reasonable efforts to move to smaller accommodation. Whether such a rule would have helped 'Jennifer' is unclear, given that there did appear to be opportunities for her to move from a three-bedroom house to a one-bedroom bungalow, but she held out for a two-bedroom property. Early intervention by the local authority before arrears spiral out of control would undoubtedly be welcome, but again there might be limited scope to prevent the situation deteriorating when the basic problem is lack of income. 'Rebecca' was in private rented accommodation, so although under-occupation was also a problem for her, her housing benefit eligibility would have been set with reference to her household composition (a single person under 35) rather than the property rented. Such a rule would therefore be unlikely to assist her and it would be difficult to impose any duty of intervention on a private landlord.

## Conclusion

The two case studies illustrate and reinforce many of the key findings of previous chapters. Every research participant's journey to destitution is unique, but the two examples are reasonably typical of the UK interviewees in terms of the range of factors underlying their deteriorating circumstances and the interaction of those factors. Both have experienced family difficulties, ill health and labour market exclusion, with difficulty holding down paid work flowing from health or family problems. 'Rebecca's' past encounters with the criminal justice system also cast a long shadow. These underlying vulnerabilities brought about exposure to debt, with basic living costs unaffordable or fines still being paid off many years after the offence, and housing problems, with the accumulation of arrears leading in one case to enforced downsizing, in the other to eviction. Social security acts as the stepping stone: even when the system functions as intended, following recent housing benefit cuts it fails to deliver sufficient income to meet living costs without a struggle. Throw into the mix a change of circumstances: transitions in and out of paid work; movement between benefits; changes in household composition; fluctuating health or compliance problems and either by design or administrative practice, the system that should provide protection against destitution instead triggers it.

Faced with the challenges described, the interviewees could have been forgiven for prioritising the business of survival above the search for a solution to the problems underlying their destitution. Arguably this *had* been the approach taken by 'Rebecca', who had only recently engaged in any advice seeking and had consequently missed out on possible opportunities to challenge adverse decisions on social security entitlements. However, the potential role of a controlling partner – even after the end of the relationship – in causing reluctance to seek outside help should not be discounted. On the other hand, 'Jennifer' was receiving support from various sources, sometimes (as with the TAF support worker) taking advice as it crossed her path, sometimes (as with the social worker) proactively seeking out experts. Even so, the positive impact of advice was limited by fragmented provision, geographic restrictions and the influence of providers on creditors, some of whom could opt out of any arrangement reached. Housing advice was extremely useful, but only accessible because of a military connection from decades previously. Independent social security advice did not seem to have been sought, but it appeared that guidance from DWP staff could not always be depended upon. 'Rebecca's' advice seeking, once commenced, likewise occurred on an issue-by-issue basis. Social security advice was now being sought, arguably too late as again there seems to be a possibility that useful information was either withheld by DWP staff during the sanctioning process or not understood. In contrast, housing advice had been sought too soon, at least from the point of view of the advice provider who could not step in until the interviewee had actually become homeless.

The interviewees' experiences, then, point to the deficiencies of policy, administrative justice and advice provision in protecting against destitution. Neither lived in an 'advice desert' as such, but, as 'Rebecca' found out when seeking help with her housing problem, the apparent availability of advice could prove to be a mirage on closer inspection. Both would have benefited from the existence of prominent, accessible, holistic advice services able to look beyond the initial query and begin to engage with the cluster of legal and non-legal problems affecting the individual. Signposting to these services from those best placed to appreciate that the person was at risk of destitution – the various agencies involved in social security administration – would also have been of value. A little more flexibility and curiosity from those same agencies could have eased some of the crucial social security problems. Legally, there was no bar to recognising that 'Jennifer' was no longer under-occupying her house, suspending deductions from her benefit, suggesting she apply for PIP or alerting her to the fact that she could not apply for Child Tax Credits by telephone. More detailed questioning might have revealed that 'Rebecca' had good reason for missing her Jobcentre appointments, should have had her benefit conditions relaxed due to domestic abuse or could have qualified for a hardship payment. The domestic abuse in itself could have been a trigger for a legal intervention that would have removed a barrier to paid employment. At the same time, some of the key problems were policy-driven, in particular those relating to the conditionalisation or reduction of particular benefits; while others cannot in any way be described as legal, notably 'Jennifer' and her daughter's health problems. The solution to destitution, then, needs to encompass greater ease of asserting existing social rights alongside a policy response to put in place more robust systems for the prevention of extreme poverty. This policy response must be cognisant of the fact that some people's lives will not fit neatly into a work-first welfare state that very narrowly defines the housing conditions it is prepared to support.

## Conclusion

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### Introduction

This report, along with the accompanying report by Fitzpatrick et al (2018), highlights the complex combinations of life events that lead to destitution and the (at least) equally-complicated problems that flow from and make it difficult to escape destitution. The concluding chapter reiterates the report's key findings on the nature of destitution (from a legal perspective) and the extent of the state's duty to protect against it. Social security emerges as the crucial element in destitution: benefit problems repeatedly stand out as the factor that tips a household from 'struggling' to 'destitute' and the most obvious solution to destitution often involves access to a benefit not currently being received, a challenge to an adverse decision, or a policy change to ease access to benefit payments. The inevitable complexity of the system means this is an area where good advice can be crucial particularly when other problems cluster around social security related issues.

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The report focuses on the value of the law and legal advice in tackling destitution. The overarching recommendation is that there should be a legal definition of destitution, enshrined in primary legislation, with a responsibility on the state to prevent destitution. Flowing from this, the report identifies the legal interventions that are necessary to give effect to the right that individuals would have to be protected from destitution. This includes identifying the intervention points where directed funding could be most effective and the points at which systemic problems in the social security system could be addressed to avoid the need for external interventions. There are, inevitably, additional recommendations that merit exploration, tackling the problems of housing and debt in particular; all of which contribute to destitution, but which are beyond the capacity of this report. In respect of these, the report identifies some emerging recommendations that could be explored, but the main focus remains on establishing a right to be free from destitution and creating the conditions to realise this. While the report has been able to provide an insight into how law can respond to destitution, there is a need for additional research to further inform and support the recommendations which are made. The most important areas for further investigation are outlined.

### Summary of key findings

The report sets out a legally-grounded definition of destitution, drawn from existing legislation and case law. The legal definition is therefore different from Fitzpatrick et al's (2016) definition, which is based on a combination of expert and consensual views, and is not limited by what the law has already said, or failed to say. Immigration and asylum legislation states that destitution consists of the inability to access adequate accommodation and other essential needs. Case law offers a clear definition of the essential needs as comprising sufficient food, essential toiletries, healthcare, essential travel, contact with the emergency services, education and socialisation of children, suitable clothing, household cleaning products, babies' essentials, a minimum of social participation and disability-related expenses. What constitutes adequate housing for the purposes of identifying destitution is less-clearly defined by case law, and may well fall below normal standards of fitness and space, but does include utilities, local taxes, furniture, white goods and cooking/dining essentials. Social security



legislation identifies a shorter list of essential needs more closely focused on absolute necessities for survival and physical health: accommodation, heating, food, hygiene and clothing. A weekly payment (currently £3775 per person) is intended to enable asylum-seeking households to meet their essential needs, other than those supplied with housing, if they are unable to do so by other lawful means. However, it is not clear that this sum would in fact be sufficient to do so, nor is it universally accepted by the courts as a statutory destitution threshold in non-asylum contexts.

The legislation also puts in place a duty to ensure that asylum seekers who register their claim as soon as reasonably practicable on arrival in the UK are protected from destitution. Duties exist to support other categories of individuals who experience destitution, but the duty can be limited to protection against breach of individual rights under the European Convention on Human Rights (ECHR), which is not equivalent to lifting someone out of destitution. The prohibition of inhuman or degrading treatment normally implies protection from prolonged street homelessness and a guarantee of access to food or washing facilities. The right to respect for family life is increasingly recognised to require that households including children have sufficient resources to obtain accommodation (which need not necessarily meet the standard of adequacy) and avoid breakup of the family unit. There also seems to be a level of destitution that offends the common law or 'law of humanity', although where this lies has not been precisely defined. Ultimately, parliamentary supremacy ensures that, outside asylum law, where minimum standards are set by EU law (and which currently apply to the UK), any right to protection against destitution conferred by the ECHR or the common law can be overridden by primary legislation.

The diverse causes of destitution experienced by research participants are explored in Chapter 2, which identifies the respective roles of legal and non-legal problems in producing destitution. While destitution invariably results from a cluster of legal and non-legal issues, unique in each case, some broad conclusions about individuals' typical trajectories can be drawn. First, one or more underlying sources of vulnerability is experienced, causing a drop in income and/or rise in living costs. These issues are sometimes related to legal problems, for example family breakdown where divorce or care of children is involved, loss of employment or wages, or criminal justice matters. Often, though, they are not – examples include health problems affecting the individual or a relative, labour market exclusion linked to health problems or caring responsibilities and the breakdown of non-formalised relationships. These then lead on to more consistently legal triggers that tip already-struggling households into destitution. Social security problems, such as delays, sanctions, failure to access a benefit where there is a potential entitlement, inadequacy, deductions or (for non-UK nationals) exclusion from the system play a key role in most journeys to destitution, including the two case studies in Chapter 5. These social security issues are often linked with problem debt, as people borrow to meet their essential living costs or fail to keep up with rent, council tax or other household bills. Inadequate benefit income can also be the key factor underlying problems of housing affordability or being trapped in unfit housing, while both affordability and fitness problems lead to debt through rent or energy arrears. In a vicious circle, poor quality housing, social security problems and debt cause or exacerbate mental and physical health problems; entrench labour market exclusion; put further strain on family relationships and make escape from destitution still more difficult.

Given the pervasiveness and impact of social security issues, Chapter 3 highlights the potential barriers to accessing benefits at every stage of the claimant journey. While benefit levels should normally be sufficient to prevent destitution when people can access their entitlements, years of below-inflation uprating and the current freeze have increased claimant precarity. However, many individuals, including some of the research participants, do not receive all the benefits to which they should be entitled (DWP, 2017c). Awareness played a role, with some interviewees not realising they might be eligible for a disability benefit or an income replacement benefit, with fine dividing lines separating eligibility for Jobseeker's Allowance, Income Support and Employment and Support Allowance. The application process posed further problems, with relatively demanding paperwork to complete, as well as delayed and perceived arbitrary decision-making that could be at odds with applicants' own perceptions of their health. Some successful appeals were reported, but there were also examples of letting appeals drop after mandatory reconsideration failed to result in a change of decision and of claimants feeling excluded and disbelieved by tribunal panels, underlining their perception of an arbitrary and unaccountable process. This perspective is further reinforced by experiences of conditionality, with variation in how Jobcentre Plus staff applied sanctions. The introduction of Universal Credit, which a few interviewees were already receiving, brought further concerns about having to manage claims online, delayed payments and rent arrears. On the other hand, interviewees who cycled between low-paid work and unemployment welcomed the new benefit's capacity to smooth the transition.



With a significant proportion of the destitution-inducing problems experienced by research participants wholly or partly legal in nature, the focus then shifts to the attempts – and capacity – of destitute individuals to address their legal problems. A key finding here is that many participants fail to meet the most basic precondition for seeking a solution, namely recognition that they have a problem that legal support can help to resolve. Where support was sought with justiciable problems this was often only at the stage when the destitute individual reached crisis point. Prior to, or as alternative to this, individuals attempted to resolve their problems themselves. This could come at a higher emotional and financial cost than many could bear, which closed down further opportunities to resolve problems. As a result, opportunities for early intervention to prevent destitution could be missed, allowing the cluster of problems to grow and financial precarity to escalate, entrenching destitution. Advice was most often sought on debt, with social security, housing, family matters and occasionally immigration also acting as prompts. Advice seeking could be quite haphazard – especially when attempts were made to access legal support online, where quality control could be difficult. More effective advice was often accessed through some sort of gatekeeper, such as a friend or relative with prior experience of the service, a referral from a creditor, a suggestion from a GP or social worker or contact with the provider at a food bank, school or other service used by the destitute individual. A court appearance could also prompt engagement with legal services, although sometimes only on arrival for the hearing itself. This pattern of engagement and the geographical or thematic limits to provision by particular providers – exacerbated by significant cuts to local authority funding (Organ and Sigafoos, 2017; Cornford et al, 2016) – meant that the service initially approached was not always equipped to deal with some (or any) of the problems in the person's cluster. This in turn led to the need to undertake further advice seeking or follow a chain of onward referrals, if sufficient time, energy and cognitive bandwidth were available. Perhaps unsurprisingly, given the complexity and diversity of the issues being grappled with, interviewees were not always clear exactly which advice services they had been in contact with, what had been done on their behalf (including whether legal aid was received), and even (in a few cases) the outcome. Some interviewees felt unable to interrogate the quality of or challenge the advice received, even though there were cases where a better outcome might have been possible, for example when some debts were omitted from a debt relief order or when an individual was advised to continue to claim a benefit despite a question mark over eligibility.

## Recommendations

As the findings show, the lives of people experiencing or close to destitution are often nothing less than chaotic. Some key recurring features of the pathway to destitution have been identified, but their manifestation and interaction with each other differ from one destitute household to another. Civil, administrative and bureaucratic justice problems have been shown to play a pivotal role in the journey to destitution, but people often only become exposed to these because of the effects of underlying issues that do not necessarily have any legal element. Destitution in turn leads to or exacerbates both legal and non-legal problems, so that escape becomes difficult and – as Fitzpatrick et al (2016) show – may not be permanent. When each destitute household has a unique set of problems, with the legal and non-legal closely intertwined, it is difficult to generalise about legal interventions that might have potential to prevent or relieve destitution in most or all cases. Nonetheless, it is clear that the law has a significant role to play in preventing and resolving the problems of destitution, fulfilling the law's normative function as a tool for change and identifying supportive legal interventions that enable individuals to access their right to be protected from destitution.

## Statutory protection against destitution

There is a fundamental requirement to create the conditions under which people can satisfy their essential needs, and the role of law in protecting basic human dignity is integral to this (McCrudden, 2008; Simpson et al, 2017). This report and those by Fitzpatrick et al (2016; 2018) demonstrate the huge diversity of problems that contribute to, flow from and are entrenched by destitution. The response to destitution, then, needs to be a holistic one. The first recommendation addresses the need for a shared understanding of what destitution is and a common purpose of preventing it across government and the public sector. Although, as Chapter 1 points out, it is possible to derive a reasonably clear, legally-grounded definition of destitution from immigration and asylum legislation, this definition may hold little weight in other policy fields. Courts considering non-asylum cases have not always recognised the asylum support system as the basis for a statutory definition of destitution, nor is there a specific, enforceable legal duty to protect individuals other than those eligible for asylum support from destitution. It is logical to argue 'that human rights include the right to a minimum standard of living, without which many of

the other rights would be a mockery' (*Matthews v. Ministry of Defence* [2003] at [26]), but the ECHR provides too little certainty about what that minimum standard of living should be and who is entitled to it. Incorporation of the European Social Charter into UK law would provide more explicit protection for social rights, but for UK nationals and other permanent residents, would go further than is strictly necessary to protect against destitution.

The first recommendation, then, is for the introduction of primary legislation to establish a clear definition of destitution and a duty on public authorities to protect all persons lawfully present in the UK from destitution. There is already some shape to a legal definition, primarily informed by the asylum support regime and the social security regulations, but adopting Fitzpatrick et al's definition has the advantage of having been tested with the public and according with the views of experts. Providing a legal frame for something that has already achieved public consensus makes best use of the law as a normative tool, to embed cultural change in society and across government. This report therefore recommends that Fitzpatrick et al's definition of destitution is given statutory force. As with the Human Rights Act 1998, this would not amount to an absolute protection against destitution as Parliament would remain free to pass non-compliant legislation if it wished. Politically, however, the duty would act as a means of collective accountability for ministers whose policies, and implemented legislation, could be implicated in the scale, nature or drivers of destitution, contrary to what the public believes is acceptable. Legally, it would ensure that public authorities with powers to prevent destitution use them accordingly unless prevented from doing so by primary legislation. This could have particularly significant implications for social security administration, as the need to prevent destitution would become a key consideration for officials exercising discretion around sanctioning, other deductions from benefits or the award of discretionary support. A legal duty to prevent or alleviate destitution, with the potential for individual or strategic legal challenges, would therefore support the recommended actions by Fitzpatrick et al (2018), namely:

- Ensuring that benefit gaps, sanctions and freezes no longer driving large-scale destitution amongst the UK working-age population should be a core aim of Universal Credit.
- The Department for Work and Pensions and other public authorities must address the unintended but serious consequences of uncoordinated debt recovery practices that can leave people with practically nothing to live on.
- Local Welfare Assistance funds should be embedded across England to provide emergency relief for people facing destitution, drawing on the positive lessons of the national schemes that have been maintained elsewhere in the UK.
- A decent level of subsistence benefits and accommodation should be made available to all people living in the UK, regardless of age or immigration status, so that no-one is forced to starve or live on the streets.

The definition provided by Fitzpatrick et al provides the principles against which a statutory definition of destitution could be measured, employing a holistic approach across the key domains of destitution (shelter, food, heating, lighting, clothing, footwear and basic toiletries) which would apply to government departments, local authorities and public bodies. Providing a supportive legal definition of destitution in primary legislation, with a concomitant duty on the state to prevent destitution, opens up a route to redress for individuals who are not protected against destitution, and reinforces a now-established cultural norm that destitution is not acceptable.

## Resourcing legal interventions

To make a legal definition more meaningful, individuals need to be able to enforce their right to be free from destitution. This requires access to justice, which itself is frustrated by the experiences of destitution. Individuals within this study struggled with the same issues that the general population struggle with in dealing with justiciable problems, with the additional complication of having more limited cognitive bandwidth to do anything more than deal with the most pressing consequences of destitution. The unlucky coincidence facing our destitute interviewees is that there has been a significant reduction in advice provision, particularly in England and Wales, further coinciding with an increase in advice demand arising from social security reforms. This has an inevitable impact on the ability of individuals to identify and manage their justiciable problems, and to avoid problems accumulating (Evenden, 2018).

The interviewees in our study experienced a wide range of difficulties, rather than suffering a single justiciable problem, pointing to the need to understand and respond to problem clusters. Advice organisations tend not to be able to offer holistic services, an issue that is exacerbated by the removal from the scope of legal aid in England and Wales of many inter-related justiciable problems, including housing and social security, that act as triggers for destitution. Enabling advisers to identify the multiplicity of problems destitute individuals have, and to support the resolution of these interconnected issues, would facilitate more effective interventions, dealing with both cause and consequence. The data is clear that destitute individuals did not make strategic decisions about how to resolve problems, being focused instead on basic issues of survival. The central recommendation on advice is therefore to expand the potential for justiciable problems to be identified, ideally at an early stage before crisis hits, by co-locating advice provision with services where the individual seeks help with the consequences of their legal problems, and resourcing advisers to address the multiple causes of justiciable problems that trigger destitution.

This speaks to two separate actions required. First, where destitute individuals are making use of crisis, housing or health services, then additional support should be put in place within these services to help resolve key justiciable problems. This could be through a co-location model which would facilitate legal interventions on referral from support services, and training of support and crisis workers to identify justiciable issues and support their resolution. This should be part of a strategic approach to delivering advice and monitoring legal need, with a requirement to collect systematic data on how co-located services can respond to justiciable problems. Second, when destitute individuals within our sample came within the orbit of advice services, there was not always provision there to assist them. We know that the problems most likely to trigger destitution are in social security, housing and debt and so there should be a partial reinstatement of legal aid to cover these issues. This would resource legal and voluntary sector advisers to at least tackle these core problem clusters, and deal with the financial and housing insecurity that push individuals into destitution.

## Social security

Multiple social security-related problems appear along research participants' pathways to destitution, from recognising and pursuing a claim, to appealing adverse decisions and complying with benefit conditions. Reform of housing-related benefits in particular has meant that entitlement often falls short of what is needed to secure adequate accommodation. No level of benefit, however, will prevent destitution if people are unable to access their entitlements. The central recommendation in relation to social security is therefore to put the government under a positive duty to ensure that individuals are receiving the benefits they are entitled to: something that should be subsumed within the overriding duty to prevent destitution.

The duty on Scottish Ministers to promote take-up of benefits provides a possible model for a such a duty (Social Security (Scotland) Bill clause 1B). Systematic improvements to provide automatic benefit check-ups (so that an individual applying for one benefit is directed to apply for another if their circumstances suggest a possible entitlement) and consistent prompts to reapply before the conclusion of a time-limited award would also encourage take-up. The Westminster and devolved governments should identify the extent of benefit underpayments; the reasons for this; the actions that will be implemented to improve uptake, and a quarterly evaluation of how effective these actions are. This will require governments to address the barriers within the social security system that inhibit legal entitlements being awarded. Applying the 'polluter pays' principle, a case can be made that it should fall to the government department with responsibility for social security to part-fund the additional advice provision to assist individuals to navigate the social security system. This should include a government-led nationwide campaign designed to build awareness of the new eligibility criteria, processes and conditions attached to claiming Universal Credit. It is recommended that the government ensure that rural areas and areas of high-levels of social disadvantage with limited access to face-to-face advice provision have the digital capacity to access online information and services. In parallel to this, the government should dedicate more focus and resources to building the individual's capability to interact effectively with the new social security system, and the advent of online tribunals.

High success rates on appeal in various parts of the social security system show that the goal of getting decisions 'right first time' (Administrative Justice and Tribunals Council [AJTC], 2011) is too often missed. Providing independent advice for claimants on their initial claims could help improve the quality of applications, although there is also a need for a better 'feedback loop' between decision-makers, internal reviewers and tribunals on

how decisions are made (Thomas, 2015; SSAC, 2016). Where claims are unsuccessful, advice on the right of appeal and signposting to advice services that have the capacity to assist would also help unsuccessful applicants make informed decisions about whether to challenge the decision (SSAC, 2016; Work and Pensions Committee, 2018). Information on success rates and the role of expert advice in increasing the likelihood of success has further potential to alert applicants to the possible gains of challenging adverse decisions (McKeever, 2013; Cowan et al, 2017). Given the high success rate of appeals against sanctions, particularly under Universal Credit (Webster, 2018), the DWP should consider implementing a policy of automatically referring claimants to an independent, free-phone advice line when sanctions are applied, similar to that offered by DfC in Northern Ireland. To prevent hardship, payment of a terminated or suspended benefit should continue until the conclusion of the appeal process, as is planned for devolved benefits under clause 18 of the Social Security (Scotland) Bill. Finally, given the concern raised here and elsewhere (SSAC, 2016; Work and Pensions Committee, 2010) that internal review is viewed as a barrier to the ‘real’ appeal at tribunal rather than a genuinely independent review of the original decision, there is a need for enhanced scrutiny of standards of adjudication in mandatory reconsideration. There should be joint consideration by the DWP and the Ministry of Justice as to how well this process is working, taking into consideration the nature and volume of mandatory reconsiderations that are overturned on appeal, and how specialist advice could be provided for those whose claims have been unsuccessful.

Social security can only protect against destitution if benefits provide sufficient income. With most of the key income replacement benefits currently frozen and their level hovering just above the JRF destitution threshold for a single adult, this cannot be taken for granted. A statutory destitution threshold based on household composition would provide a benchmark against which to assess the absolute minimum level of benefits. This might call into question policies including the benefit freeze, the limitation of Child Tax Credits/the child element of Universal Credit to two children per household, the post-2016 level of the household benefit cap (see Simpson, 2018) and the application of the social sector size criteria (‘bedroom tax’) when smaller accommodation is not reasonably available. Given the generally low level of benefits, there is also a need to limit the extent of deductions that can be made from payments. This could be achieved by reinstating the greater readiness pre-2012 to write off overpayments resulting from administrative error (Mitchell, 2010) or by setting an income floor below which no further deductions can be made. In keeping with the recommended duty to prevent destitution, any benefit sanction should consist of a percentage reduction of the personal/standard allowance rather than its outright suspension, or there should be a presumption in favour of a hardship payment unless it can be demonstrated that the claimant would not be destitute without one. The duration should also be reviewed. Research evidence suggests such ‘softening’ would have little or no impact on the effectiveness of sanctions as a tool for securing compliance with benefit conditions (Griggs and Evans, 2010).

For those who fall through the gaps, public provision of last resort would be preferable to the growing reliance on charitable assistance (Perry et al, 2014). Given the geographical inconsistencies in this support (Gibbons, 2016), our report endorses Fitzpatrick et al’s (2018) recommendation that examples of best practice in discretionary assistance schemes should be identified and rolled out. Ideally, minimum standards would be placed on a statutory footing, as in the Welfare Funds (Scotland) Act 2016. Guaranteeing a minimum income floor beneath which benefit payments will not be cut, either by sanctioning in proportion to that income floor or making automatic provision for hardship payments unless it can be established that an individual will not be affected disproportionately by the reduction in their income, should also be implemented.

## Debt

Debt was identified by the interviewees as both a cause and consequence of destitution, with repayment often only possible – if at all – by sacrificing any present quality of life. Public debts were seldom (if ever) forgiven, even though the advice to decision-makers allows scope to do so in cases of severe hardship (DWP, 2015/2017; 2018). An explicit duty on public authorities to protect against destitution might require this discretion to be more readily exercised in favour of the claimant, or recovery undertaken more slowly, if necessary to prevent destitution. The action recommended by Fitzpatrick et al (2018), that the Department for Work and Pensions and other public authorities must address the unintended but serious consequences of uncoordinated debt recovery practices that can leave people with practically nothing to live on, would support this duty. Private creditors would be unlikely to fall within the scope of any destitution duty. However, water undertakers are barred from cutting off domestic supplies for non-payment (Water Industry Act 1991 s61), which might account for their reputation among the interviewees as relatively understanding creditors. In principle, a similar rule could be applied to electricity and mains gas suppliers, although this would create an inequality between mains

gas customers and users of LPG, oil or coal, who would not enjoy equivalent protection. While this might be a limitation, the priority should be to protect electricity services for destitute customers and to ensure the perfect does not become the enemy of the good.

More generally, the current proposal for a six-week 'breathing space' for individuals with problem debt (the characteristics of which have yet to be defined), providing a window in which debts are not pursued and interest does not accrue to negotiate an arrangement with creditors, has the potential to be of benefit (HM Treasury, 2017). A possible requirement to seek expert advice during this period forms part of the consultation and there would appear to be value in funding specialist advice to support debtors in managing their debt, and building debt advice into the co-location model aimed at offering more holistic justiciable solutions. Given the close connection between debt and mental health problems, which interviewees' experiences illustrate, the Money and Mental Health Policy Institute's (Bond et al, 2018) recommendation that 'breathing space' should be available to people with significant mental health issues even if they do not meet the normal problem debt criteria merits consideration. However, this model does not overcome the problems associated with the cost of debt relief – £90 for a debt relief order, up to £850 for bankruptcy according to interviewees and up to £2,000 for an individual voluntary agreement. Barriers could be removed by allowing payment of the fee for a DRO by instalments or funding some advice providers to cover part of the fee. This in turn would leave untouched the problem that key creditors may be able to keep their debt outside the DRO or any other arrangement reached, which the 'breathing space' proposals give no commitment to addressing.

A holistic approach requires consideration of how individuals might be protected from taking on excessive debt in the first place, not least by providing sufficient income to enable individuals to afford their essential needs without borrowing. The suggestion made by some interviewees that a 'lender beware' approach to problem debt should operate, so that those who make credit available to individuals in poor financial circumstances assume the risk that they will not be able to repay, would certainly focus minds, but seems unlikely to be put into practice. Citizens Advice recommendations (Hardy and Lane, 2018) around a cap on interest rates and a ban on unsolicited increases to credit limits appear more feasible.

## Housing

For the research participants, homelessness and serious housing unfitness were often the ultimate manifestations of destitution, as well as serious obstacles to escaping destitution. JRF has recommended that comprehensive housing advice services covering all tenures should be established across England, Scotland and Wales, with the existing services delivered by Housing Rights Northern Ireland recommended to continue (Robson and Duggan, 2018). Once again, this would support individuals to access a statutory protection against destitution, making the legal definition of what constitutes destitution in housing terms more meaningful.

Some policy initiatives already in place in Scotland could help underpin this duty. Housing authorities in England, Wales and Northern Ireland have a duty to house homeless households only if they are in 'priority need'; those in Wales must also help non-priority need homeless applicants to secure accommodation (Housing Act 1996 s193; Homelessness Act 2002 s2, 3; Housing (NI) Order 1988 part II; Housing (Wales) Act 2014 part 2). In Scotland, the 'priority need' restriction was abolished by the Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012, so that all unintentionally homeless people are entitled to settled housing. Single homeless people are therefore more likely to be eligible for housing than those elsewhere in the UK. Given that single people of working age were found to account for 61% of the destitute population in Fitzpatrick et al's (2018) quantitative study, this has real implications for the ability of destitute individuals to access long-term accommodation. In 2014-15, no homeless households in Scotland were assessed as not being in priority need, compared to just under 20% in England and just over 20% in Wales (Bate, 2017). England, Wales and Northern Ireland should give serious consideration to abolishing the 'priority need' test in their homelessness duty.

Many of the housing affordability problems reported by interviewees were at heart social security problems. A review should be undertaken of the current operation of housing-related benefits. This would consider the compatibility of the social sector size criteria in housing benefit with the fluidity of family circumstances and the limited scope for downsizing in many areas (Welfare Reform Committee, 2014) and the appropriateness of local housing allowance levels in areas with limited affordable private rentals. It should also monitor the impact on rent arrears of the different payment arrangements for the housing element of Universal Credit between England and Wales (to the claimant), Northern Ireland (to the landlord by default) and Scotland (to the landlord



on request). These issues of affordability sit alongside issues of fitness, both a cause and a consequence of poverty (Birch, 2015). Only extreme cases are likely to give rise to legal intervention, but if, as was the case for one interviewee, a tenant has to leave his or her accommodation after environmental health officers declared it unfit for habitation, this should be taken into account when prioritising the allocation of social housing.

## Future research directions

Research on destitution in the contemporary UK, particularly as it affects UK citizens, is a relatively new field. Prior to 2016, there was a strong research focus on responses to destitution, with an emphasis on meeting immediate survival needs through food aid, leaving the nature and causes of destitution relatively under-explored. Arguably the most significant finding of this report is the sheer complexity of the many problems with which destitute individuals have to grapple, which in itself points to a need for further research to better understand the phenomenon. In particular, the findings and recommendations suggest there are ways in which interventions that can be broadly characterised as legal in nature might help prevent or trace a pathway out of destitution, which require further investigation.

The most direct potential follow-on to this study consists of a further fusion of the social policy research on destitution and empirical legal research on access to justice. The literature in the latter field indicates that people experiencing socio-economic deprivation are more likely to experience justiciable problems, and more likely to face difficulty resolving those problems – findings that are reflected in the experiences of destitute participants in the present research. Northern Ireland is a good candidate for a pilot study due to its small scale; the existence of a constitutional duty on the devolved Executive to address poverty and social exclusion (Northern Ireland Act 1998, section 28E); and the fact that no regional legal needs survey has been carried out for more than a decade (Dignan, 2006). The pilot, then, should bring together researchers from across disciplines with a view to developing a Northern Ireland-specific legal needs survey capable of exploring the extent to which legal needs might manifest as triggers for destitution. A focus on a devolved region would also provide scope to explore the extent to which individuals are able to access, engage with and understand expert or legal support in a part of the UK unaffected by the highly-publicised cuts to legal services flowing from LASPO.

The implementation of a legal definition of destitution, based on Fitzpatrick et al's expert-consensual definition, would require a detailed translation of policy and principles into statutory form. While the broad duty imposed on government departments, local authorities and public bodies to protect against destitution could be set out in primary legislation, the detail of how this duty could be implemented and operationalised could be established under secondary legislation, supplemented with guidance. It might be possible to follow the approach under the Social Security (Scotland) Bill 2018 where the duty to protect dignity under the Scottish social security system is embedded within the primary Act, while the detail of how this will be implemented will be fleshed out in secondary legislation (Simpson et al, 2017). The advantage that exists for destitution is that the original data set created by Fitzpatrick et al (2015) for their interim report on destitution could be analysed further to inform the development of the legislation, providing a more detailed examination of what the public already supports. This should be a key focus for further research to support legislative drafting.

Social security problems are a crucial feature of the pathway to destitution and a number of avenues for future research emerge from the findings. First, it is well documented that means-tested benefits suffer from poor take-up – up to 44% of all potential income-based Jobseeker's Allowance claimants do not receive the benefit (Grover, 2017; DWP, 2017c) – and this was reflected in the research findings, with several interviewees not receiving benefits to which it appeared they might be entitled. There has been fairly steady interest in the quantitative extent of non-take-up and its likely effect on poverty rates and some investigations of the reasons why people do not take up their entitlements (Finn and Goodship, 2014). The findings of this study show that it is possible to identify destitute individuals who appear to be missing out on benefits. Given that this group arguably has most to gain from increased take-up, there would be merit in a qualitative study of why they do not claim. Allied with this is the need to understand why claimants do not dispute decisions when their claim is refused. Identifying this group, particularly those who are not supported by advice organisations, is a significant obstacle to research recruitment. The recommendation here is for the Department for Work and Pensions, the Department for Communities in Northern Ireland and Social Security Scotland to facilitate access to this research population to understand their rationale for not challenging their social security decision. In addition, and in light of the problems identified with seeing the application process through to a successful conclusion, a co-production exercise involving claimants, decision-makers and tribunal members could be undertaken with a view



to developing a user-focused design for key income replacement benefit applications. This would be particularly relevant to disability and incapacity-related benefits and could sit alongside the development of a plain-English version of the eligibility criteria and assessment descriptors.

Finally, claimant conditionality and the associated sanctions regime stand out as important factors in producing destitution among claimants of working age income replacement benefits. The Welfare Conditionality study, which reached its conclusion as this report was being prepared for publication, is likely to stand for some time as the definitive statement on the effectiveness and ethicality of sanctions as applied to out-of-work claimants (Watts and Fitzpatrick, 2018). It will inevitably have less to say on in-work conditionality, which is only now being phased in as Universal Credit rolls out, which provides one avenue for a complementary study (SSAC, 2017). Welfare conditionality also fails to capture the discretionary decision-making process from the point of view of frontline advisers and managers at Jobcentre Plus. For example, non-UK studies have shown that street-level attitudes to claimants influence decisions on eligibility to entitlement (Altreiter and Leibetseder, 2015) and the decision on whether or not to sanction (Caswell and Høybye-Mortensen, 2015). Such discretionary processes can have a significant effect on claimant outcomes, a finding reinforced by the experiences of destitute participants in the present research. There is an urgent need for qualitative research with decision-makers, advisers and welfare-to-work providers to determine what factors are taken into account when deciding whether to increase a claimant's conditional requirements and the triggers that lead to the referral or imposition of a sanction.

## Conclusion

That a report on destitution needs to be written is itself a warning that current social support structures are not working. That this report is part of a new body of work that demonstrates, at best, the escape from destitution is via severe poverty and, at worst, that destitution is a continuing state for many individuals, calls into question the efficacy not just of our social systems in general but of the legal system in particular in protecting the basic rights and dignity of individuals in the UK. There are, of course, legal arguments that can be made that the state has a responsibility to improve the position of destitute individuals, but these are not straightforward or water-tight arguments given the necessary reliance on domestic law, including incorporated treaties, that offer minimal protection to social and economic rights. There are possibilities that legal standards can be formed from unincorporated international legal treaties to which the UK is a signatory, but such standards would currently have to be judicial creations that remain vulnerable to political hostility and, necessarily, to parliamentary authority through which advances in social and economic rights can be removed. The current prospect for hailing the social and legal protections for destitute individuals in the UK is not encouraging.

Despite this, however, the position must be one of hope rather than despair. This report offers insight into what steps the legal system has already taken to recognise and define destitution, and the protections for individuals whose circumstances place them in this position. In identifying the limitations of the legal protections, the report provides an empirical and doctrinal rationale to bridge the human rights gap that exists. There is no suggestion here that the proposed legal duty to prevent and alleviate destitution will automatically become an accepted reality, but nor is there an evidence base on which to argue against it. Current human rights protections do not go far enough: statutory protection is needed, and the empirical evidence examined in this report, highlighted particularly by the case studies in Chapter 5, provides critical evidence for this assertion. A failure to act at the point of destitution will inevitably lead to the UK breaching its domestic human rights obligations; the distance between current levels of destitution and inhuman or degrading treatment under Article 3 ECHR is little more than a continuing deterioration of destitute circumstances. The fact that destitution has been recognised by public consensus as being unacceptable underlines what should be a logical position: that the state should be obliged to provide the conditions under which people can satisfy their essential needs.

More pragmatically, there is much that can be done to assist individuals facing destitution and this report highlights the many justiciable issues that arise from the circumstances of destitution, and the various intervention points where individuals could be assisted to escape destitution. We cannot, and do not, make the claim that legal intervention at different points in the destitution journeys described by our interviewees would have ended or altered those journeys but we can point to systemic and continuous issues that make escape from destitution more difficult, and where legal interventions could assist. The social structures designed to support individuals and provide minimum standards for living are implicated significantly in this report, particularly the social security system. System design failures here combine with insecurity of entitlement and inadequate income. It would take relatively little to deal with some of these problems, with operational solutions within easy reach,

albeit that policy choices on design and benefit levels remain a tougher, but not unreasonable, ask. Where the system cannot (or will not) be corrected, however, the role of independent advice can help to mitigate the worst effects and build the necessary income security of three months' regular benefit payments to stabilise some of the circumstances that destitute individuals are subject to. The hope remains with this report, therefore, that the UK will act to prevent and alleviate destitution, providing a framework of basic rights within which statutory duties will be created, and individuals provided with support to avoid or escape destitution.

## Notes

1. Apart from a small number of key cases, the review was limited to post-2000 cases as the key primary legislation – the Human Rights Act 1998 and the Immigration and Asylum Act 1999 – would not have been in force.
2. Each bedroom should have a minimum floor area of 70 square feet (6.5m<sup>2</sup>) for one occupant, or 110 square feet (10.2m<sup>2</sup>) to be adequate for two occupants.
3. Some comparable items were proposed as essential needs by Fitzpatrick et al (2015) following their consultation with experts but the survey revealed no public consensus that these were in fact essentials: household cleaning products (48% of respondents recognised as an essential need), communication costs (37%), non-prescription medication (30%) and bus fares (30%).
4. Actual levels may be lower if housing costs exceed housing benefit income, for example because of under-occupation of a social rental or private sector rent in excess of the local housing allowance or if Council Tax Support does not cover the full liability.
5. Interviewees were categorised as having ‘complex needs’ if they reported having experienced at least two of homelessness, substance misuse, offending, domestic violence or begging – see Fitzpatrick et al, 2018.
6. Ministry of Justice (MOJ) research found 37% of surveyed prisoners could be at risk of homelessness on release, which in turn was associated with a more than 50% increase in recidivism – Williams et al, 2012.
7. The localisation of council tax support has resulted in reduction of eligibility for some claimants in most parts of England compared to the former council tax benefit – Bushe et al, 2013.
8. £250 appears to be an under-estimate – Citizens Advice states that bankruptcy requires fees and a deposit totalling at least £680.
9. The cap is set at £384.62 per week before housing costs and would therefore apply if the interviewee’s housing benefit were more than £92.56 per week.
10. Assuming the stated £600 UC entitlement is accurate, deducting all the reported liabilities in fact leaves only £66 per month.
11. The interviewee reported having £82 per month disposable income; absent the deductions this would have increased to about £220, equivalent to £50.77 per week. The JRF destitution threshold for a single person was £70 per week, while an individual in receipt of asylum support would have received £36.95 until January 2018, £37.75 thereafter (all figures after housing costs).

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